(1) 95-1224

Supreme Court, U.S.
F I L E D
JAN 29 1996
CLERK

No. 95-

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA,

Petitioner,

v.

ALVIN EDWARD HOROWITZ, et al,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Edith Broida
Pro Se
P. O. Box 5941
Washington, D. C.
20016
301-681-2050

QUESTIONS PRESENTED

1. Whether a federal district court and appeal court prejudicially can make a clearly erroneous ruling on diversity of citizenship denying petitioner as a United States citizen access to federal jurisdiction guaranteed by the 14th and 5th Constitutional Amendments, and Article IV, Sec. 2, Article III, Sec.1 and 2 the liberty and freedom to choose the location of a permanent residence which meets all legal requirements declaring it her permanent domicile whenever she so decides, and proceed for her day in court against tort-feasing defendants who have caused her property appropriated to them by conspiracy with State judges, leaving said property in the possession of such malfeasors which is a governmental forfeiture of her property, and a deprivation of her civil rights.

2. Whether the appeal court had to reverse the district judge's acceptance of the Magistrate's clearly erroneous conclusions where the district judge having plaintiff's two simultaneously filed cases before him sets this case for trial on the merits although the Magistrate's Report is pending on the companion case, both cases raising the same issue of diversity against same defendants, making clear the district judge's total lack of knowledge and confusion about both cases, the companion case in this court, 95-914.

3. Whether the district judge was required to hold evidentiary hearing before him on this and the companion case, 95-914 (this court) as requested by Plaintiff on the substantive issue of diversity in both cases, and hold hearing de novo to review the testimony on domicile as required by federal rules after plaintiff objected to the Magistrate's Report.

4. Whether the district judge in setting this instant case for trial on the merits when only one defendant had been served, the other three resisting service, and notice by publication denied by magistrate, and again setting trial on the merits shows a complete lack of knowledge of the two cases before him, causing his dismissal of the two cases to be reversed.

5. Whether the appeal court can affirm the district court's dismissal for lack of diversity and deny oral argument where the district court clearly has refused to observe the law of evidentiary proof on the issue of legal domicile for diversity of citizenship jurisdiction and plaintiff has clearly proved diversity by legal domicile different from all defendants.

LIST OF PARTIES

Interested parties might be:

Honorable C. Clyde Atkins, federal district court, southern division, Miami, Fla., Senior Judge, presid-on this case and companion case, this court 95-914

Magistrate Ted E. Bandstra, presiding on issue of diversity of citizenship entering his Report accepted by Senior Judge

Appeal judges Eleventh Circuit Court, Anderson, Edmondson, Carnes

Parties to Cause:

Edith Horowitz Broida, Petitioner, Appellant, Plaintiff, eldest of two issue of decedent and his spouse

Alvin Edward Horowitz (a/k/a Alvin Alvyn) 2-year younger brother, second issue of decedent and his spouse.
Respondent, Appellee, Defendant.

Other Respondents,Appellees, Defendants.

Stephen Ronald Horowitz, oldest issue of Alvin Horowitz

Paula Horowitz Roth, second issue of Alvin Horowitz

Karen Horowitz Barnett Kaplan, third issue of Alvin Horowitz.

Betsy Horowitz Nieves Horowitz, fourth issue of Alvin Horowitz.

PETITIONER REQUEST THAT THIS COURT REVIEW THIS PETITION TOGETHER WITH THE PETITION IN 95-914 AND THE APPENDIX FILED WITH THAT PETITION AND THE REPLY IN THAT CASE. The appendix filed with the Petition contains the Report and Recommendation of the Magistrate accepted by the District Judge for dismissal of both cases. It is 18 pages and begins on page 5- 914 PetAp

Petitioner is referred to also as Plaintiff and Appellant herein.

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Thomas James Norton

EDITH HOROWITZ BROIDA, Appellant below, respectfully petitions for a writ of certiorari to review the ruling of the Eleventh Circuit Court of appeals which confirms the dismissal of her action against defendants which was a clearly erroneous decision denying the indisputable evidence she produced of legal domicile which provided her right to federal jurisdiction based on diversity of citizenship.

OPINIONS BELOW

No district court decision has been found, nor has the Eleventh Circuit ruling been reported. Appellate ruling affirming the lower court, without law citation entered April 27, 1995 with denial of motion for oral argument in the same ruling.(App 1 Petition for Rehearing was lost by the clerk, finally presented to the court, denied November 6 ,1995, and separate ruling, same date denying motion for oral argument.(App 2

December 29, 1995 the appeal court denied Appellant's Motion to expedite their ruling which appellant expected would affirm as the earlier ruling in companion case filed before this court 95-914 on November 8, 1995, which expedited ruling would have assisted Petitioner in filing this Petition together with 95-914, both having the same issue of diversity of citizenship federal jurisdiction (App 1

The case no. in appeal court is 93-5022, district court no. is 92-0298.

Petitioner Requests That This Court Reviews This Case and S.Ct 95-914 Pending Together.

JURISDICTION

The appeal court decision denying the petition for rehearing the jurisdiction of this Court is invoked under 28 U.S.C. 1254 (a) and perhaps(c.

CONSTITUTIONAL PROVISIONS

The 14th Amendment to the U. S. Constitution provides that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside", and, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States", " Nor shall any State deprive any person of life, liberty or property without due process of law", " nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the Constitution provides "no persons shall be deprived of life, liberty, or property without due process of law," and

Article IV, Section 2 of the U. S. Constitution "The citizens of each State shall be entitled to all Privileges and Immunities of citizens in the several states ", and

Article III, Section 1, " the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish; and Section 2, " The judicial power shall extend to all cases in law and equity arising under

this Constitution, the laws of the United States, ... to controversies affecting Citizens of different States. "

STATEMENT OF THE CASE

In this case this Court is confronted with an issue that affects the constitutional right of every citizen and even non-citizen of this Nation, the inalienable right, to move freely throughout this country from State to State to establish a desired residence for whatever reason that person holds without the interference and supervision if either state or federal government, or their courts, or those seeking to stop litigation that involves them as opposing parties, as in this cause of action.

" A State cannot tie up a citizen of another state having property within its territory, invaded by unauthorized acts of its own officers, to suits for redress in its own courts." (1908, U.S. Supreme Court, cited in The Constitution of the United States, Thomas James Norton, 1943, p142, Prentis v. Atlantic, 211 US 210, 1908.

If there is anything that is sacred to this Nation it is the freedom of movement of a free people. Unlike countries of other continents, as, for example, Europe and the Middle East, once a person is admitted to this country, or is native-born he/she may live anywhere in the Nation without displaying a passport for entry and without any question being asked as to the reason. Whereas in former times people basically spent their entire lives in one community,

after World War II, and particularly since the 60's as small farms have decreased and government and industry have proliferated, this Nations's people have been on the move and have even established residences in more than one location, and many thousands employed overseas, as well as hundreds of thousands of retirees residing most of each year in states other than their maintained legal domiciles.

The issue is the district court accepting a clearly erroneous conclusion of a Magistrate who held two hearings receiving oral and written testimony of the permanent residence of Plaintiff in Washington, D. C. continuously since January 1963 maintaining a physical residence with all the costs necessary for such maintenance, with proof of paying homeowner's insurance since 1976 continuously to the date of the hearings (and in the present) (See App, Letter of Liberty Mutual Insurance Company of Fairfax, Va. certifying such insurance since 1976 on Plaintiff's residence and insurance for the car in use at the time of the hearing and continuously up to that time. p 6.

Other written evidence was a statement from the Dade County Supervisor of Elections that Plaintiff had been a registered voter through 1986 but had not voted since then and had not reregistered and by law had been dropped after

notified she would be removed.(Ap 7 Plaintiff testified she deliberately gave up her right to vote in Florida which she had had since she registered at age 21, and voted absentee ballot during the years she lived in the District of Columbia and worked in federal agencies there since 1963. Plaintiff introduced evidence of a pleading she filed in a suit in 1987 federal court, the pleading being served on all defendants in this and companion case in this court 95-914 that although she had maintained her domicile in Florida, although removing all her property and establishing a permanent residence in Washington in January, 1963 she now has declared she has changed her domicile to her permanent Washington address, although now living temporarily in Miami, Fla.

Plaintiff testified that although having her only real permanent residence in Washington, D. C. since 1963 she maintained a fictional domicile at the home of her parents in Miami Beach, Fla so that she could retain her license in the Florida Bar which she had since 1954 after graduating cum laude, 5th in her 103 member class. In this way since her parents were legal residents in Miami Beach she was available to return to represent them in any legal actions, as well as her brother and his wife and four issue, and her daughter all of whom were residents of Dade County, Florida.

Plaintiff introduced evidence that she had to return to Miami Beach many times for her parent's needs. Thev

operated a business on Miami Beach in which Plaintiff had worked since she was 16 years old and on a full-time basis after college, and represented them in legal matters after she became a lawyer.

In 1967 she had to return to deal with an income tax problem they had See Ap p ,8 , and had to remain for a year and nine months managing the business after discovering that her father, the manager, having begun to lose his mental abilities, the business was facing bankruptcy. After bringing it out of bankruptcy, representing them in nine lawsuits against them by creditors, successfully, she closed the business and they retired. She returned to Washington. See Ap 9

Now she had to return to Miami due to illness of each , See her letter to the administrator of Mount Sinai Hospital on her father's stay there. Ap p -10. The letter was written from Washington., as was the earlier letter, prior to the near bankruptcy, to a business broker regarding selling the business. (Ap p 8

In 1973, again,a condemnation suit was begun against the parents' only real estate, their home. They called on her to protect them so as not to lose their home or at least receive fair market value for it which had not been offered since it had a high value for its contemplated use.

She investigated all the issues, retained counsel, returned to Washington but had to return again to change

counsel and make court appearance to do so. To counsel this was a routine case; to her parents this was a destruction to their lives having lived in that residence for 30 years.

Appellant, lawyer, educator, sociologist, and management and systems expert had been working in federal agencies as a youth specialist to create and direct programs for the educational and employment rehabilitation of high-school dropouts and for the improvement of the public schools. This was her reason for moving to Washington to work in these programs. Having a degree in education, rearing her own child, she had been active issues regarding education (Ap p 13- D. C. Model School Div.

Her own daughter was a school dropout after a frustrating school career, and she knew many such children.

Her work in Washington for the DePartment of Labor to create training programs for school dropouts mainly served disadvantaged youth. Having been a civil rights activist since she became a young adult, and involved with charitable and socially conscious organizations since then she was well qualified. She directed the first federal National Teacher Corps program in 1966, and coordinated the first federal Upward Bound program for the Model School Division in 1965 recruiting students from the four D. C. high schools who fit the poverty qualifications and academic ability for summer courses for college entry. App, p 20- (Letters from applicants)

Having closed her law office after ten years of practice when moving to Washington she listed herself at the office of a lawyer friend so that there would be someone to receive telephone calls from lawyers or judges. She opened a post office box to receive mail and to receive the forwarded mail from her residence in Washington, When she returned there she would send for her mail from Miami, and so, back and forth.

In July 1977 the eminent domain case went to trial. She had to change counsel twice before that, and after numerous attempts to find the necessary qualified real estate appraisser witness,she had caused the case to go to trial on the issue of the necessity for the taking. The trial judge dismissed the suit as there being no necessity based on her research of the condemnor's plans and actions.

The condemnor took an appeal and the trial judge was reversed. While an appeal was in progress to the Supreme Court of Florida ,(and Plaintiff had prepared the case for trial, for appeal to the 3rd District, and to the state Supreme Court) Plaintiff's mother suddenly died August 3, 1977. Her mutual and reciprocal only Will named Plaintiff and her brother as equal heirs and her husband Maurice (Moe) their father as first personal representative, and Plaintiff and her brother, 2 years younger than she, as successor co-personal representatives.

Her father Maurice was not capable of acting as personal representative. He hired a lawyer social acquaintance whom they had befriended a few years before. The lawyer believing his client to be very rich endeavored to drive a wedge between Plaintiff and her father since he knew she would keep him from taking control of Maurice.

Maurice was both physically and mentally ill. He had a bad heart and no longer had his wife of 60 years. Ap ,p10-11 He was 83.

His mutual and reciprocal Will was identical with his wife's leaving her estate equally to her two issue. Ann Horowitz had an investment portfolio and the residence had been half hers. Plaintiff was familiar with her assets since she had become their tax return preparer after the business closed. See Letter from Ann to Plaintiff about funds Plaintiff had told her to give to brother Alvin. Ap, p 9

Plaintiff could not abandon her father to this lawyer or abandon her interest in her mother's estate and she was the only one who knew how it should be handled to conserve it.

She remained to protect her father and her property doing all the actual personal representative work on her mother's estate for the 70 year old lawyer of her father.

Her mother's estate was not even a half million. Plaintiff had to litigate to stop the lawyer from trying to get too much money out of the estate for her father who was not capable. She had to prepare many pleadings and have court appearances. Maurice died six months after his wife and it soon was discovered that during the six months the lawyer had prepared seven Wills for Maurice contrary to the mutual and reciprocal Will adding his wife, daughter, and himself until the final Will a month before Maurice died with his family receiving three equal shares of a Will divided into thirteen shares, and with two for charities. It was also discovered he was taking money from Maurice. And it was discovered that for the first time in his life Maurice had opened a safe deposit box for which the lawyer had a key, and a key to the residence.

BASIS FOR THIS SUIT IN DISTRICT COURT

When the father died Plaintiff notified her brother to come to the courthouse and sign the necessary papers to substitute themselves for him as personal representatives and fire the lawyer. That day they saw the Will prepared by the lawyer and both were very angry.

Brother Alvin, his wife and children agreed they would fight the lawyer's Will and uphold the mutual and reciprocal Will of Maurice as the binding will, which it is by Florida law. They entered into an heirship agreement stating that they reject any will that leaves Maurice's estate other than by the terms of the mutual will, divided between his two children. All his issue were adults Three were married. Stephen Horowitz was an executive with the Howard Hughes Corp.

as a mathematician since about 1970. Paula was an office manager and her husband an electronics technician. Karen was a medical technician, and her husband a policeman. Betsy was in college. None had any children and had no such plans and do not now have any.

Plaintiff's daughter Stacie who was divorced and had a child was guaranteed the 1/13th share for her and her child after costs.

See Ap 14,15 for the pleadings filed by Plaintiff and Alvin and by Paula explaining the heirship agreement which was filed with the clerk in 1983 becoming irrevocable by state law.

As part of the agreement Plaintiff would act as attorney for the estate of her mother, personal representative with her brother cooperating, as attorney litigating on the invalid will, against the fees filed by the lawyer for $20,000,which her litigation reduced to $8000.for his work on the mother's estate.

Based on the agreement she now had to litigate in probate against the lawyer's will, during which she discovered the many wills he had prepared and money he had obtained from Maurice.

She, having spent five years to litigate on the eminent domain case for which the condemnor had offered only $100,000 and she now found an appraiser who valued it at between

$648,000 and $1,000,000. for a value trial and neither her brother or any of his family having been involved in that proceeding in any way or knowing much about it, it was agreed she would continue to try to obtain fair market value.

The agreement was entered into by all the family of Alvin, witnessed and notarized.

By January 1980 the litigation on the Will was concluded, and the other invalid claimants removed.. Plaintiff had to take an apartment and expend costs while maintaining her home in Washington.

Had the estate of her father been easily settled as well as the eminent domain cause she would have returned to her home in Washington at once. In July 1981 the eminent domain case went to jury trial on value with a new trial lawyer she obtained and for whom she prepared the case. The trial judge made some significant errors. She took the appeal herself and argued it. The jury verdict was reversed for the errors of the trial judge. Brother Alvin was at the trials and depositions on the Will contest; he was at the value trial and present for her appellate argument. The jury verdict of $300,000 reversed, a new trial might bring the $1,000,000. appraisal. See Ap 17 So. Reporter citation of appeal.

During all the years since 1977 Plaintiff could only return to her

home in Washington about once, sometimes twice a year. She did not rent it expecting everything to be resolved at any time. It was very expensive to maintain two residences but she never intended to remain in Florida.

When she returned to Washington each time she retrieved family letters and other papers such as those filed in the appendix.

In 1981 Stacie Broida Merrett retained Gene S.Rosen, her attorney to obtain the settlement she had been promised because she thought the eminent domain case had ended. Stacie had set up a distance between herself and her mother and grandparents. Out of sympathy for her situation of having a six year old child Plaintiff had made the agreement to give her the invalid Will shares- if there ever was anything. Alvin's issue also would receive some money, if there ever was any.

The reversal of the jury verdict was in 1982. Before a new trial was set attorney Rosen came into court and with the assistance of probate judges, despite statutes prohibiting it so late in an estate, he was able to remove Plaintiff and Alvin as personal representatives resulting in the appointment of Samuel S. Smith and Milton Kelner as guardian. He solicited Karen Barnett and perhaps obtained Melvin Trute as her lawyer to assist him in court since Trute specialized in probate and Rosen had no such experience, and neither did elderly Milton Kelner who once was a tort lawyer but now had judicial friends appointing him into cases as guardian.

Plaintiff had to file appeals to remove the invalid appointments. In her practice before going to Washington she had won at least 95% of her cases. Before the appointment of Smith she was successful in the eminent domain case. She discovered Smith had attached himself to the probate division and to The Florida Bar. He was appointed into cases and because of his activities in the Bar for many years he knew judges throughout the State and the country.

She was unable to have him removed although Gene Rosen had told her that if she would let her daughter be personal representative with him as her lawyer of course he could have Smith removed.

In 1984 she told her brother they should settle because she was now working for the lawyers and Smith was trying to get take control of the eminent domain case and hire his own lawyer for the new trial. Plaintiff managed to get a settlement of $400,000 for the estate.

It is difficult to understand how lawyers would involve themselves in a small estate, and judges as well. Decedent Maurice left $5400, and some money he was given from his wife's estate, and debts. He had the residence for which the condemnor had offered $100,000 in 1973. Had Plaintiff not wanted to give some money to her daughter a claim could have been made to put the residence in the mother's estate.

Immediately after the settlement on the residence Alvin and his issue retained Bernard Weksler to remove PLaintiff from Maurice's estate. Oddly enough, he came in representing even Karen who al-

ready had Melvin Trute as her lawyer and he obviously knew nothing about the estate case. He had been fired by Maurice in 1968 for misrepresentation and purportedly keeping escrow funds given to him by Maurice. He now wanted to punish Plaintiff because he too thought Maurice was a very rich man.

Finally the probate judge distributed the estate giving $100,000 in fees to Smith because as he said Plaintiff brought all the actions (for which she and her brother paid from the mother's estate which they kept open to fund the Maurice estate);$25,000 to Rosen for his successful illegal interference; $10,000 to Kelner for his interference without doing any benefit for the minor child about whom he knew nothing and never met; and the balance was divided among Alvin and his four issue who brought Trute, Rosen, and Weksler to court for the trial on the distribution to defraud Plaintiff.

The probate judge did not return all the money Plaintiff had loaned the estate, and refused to pay the claims she had filed initially for herself , and for herself and brother, on the chance that the Will lawyer might win, or the heirship agreement would be breached.

The distribution was made in 1989. After appealing it unsuccessfully because of Smith who defended,Plaintiff filed two suits in State Court; the companion suit which is before this Court on her claims against the decedent and money owed to the mother's estate by decedent and money owed to her which are

are all provided for by state probate law for suit in general jurisdiction against the debtor estate. She also filed a suit against Alvin and his issue for deliberately inducing her to enter into the agreement causing her to work professionally to benefit them, with the full intention initially of breaching that agreement despite Alvin's show of assisting her in resisiting the takeover by the marauding judge and attorneys. Ap 14,15

There was sufficient evidence that could be proved in a court of law. Alvin's issue contributed no money and no work to protect or create the increased assets of the estate, and they made no offer to return their ill-gotten gains.

The judges, the marauding attorneys lost at least another $200,000 to the estate which none of them are intelligent enough to understand. Neither it seems are Alvin and his issue intelligent enough. Had a new trial produced another $200,000 Alvin would have had half of that and he could give his children whatever they wanted from it.

Their primary goal was to cheat the Plaintiff who had given up her own career and was not earning any income for herself.

The two cases came before judges who had relationships with one attorney or the other and they were depriving Plaintiff of her civil rights.

Plaintiff refiled the cases in

federal district court hoping to have unbiased judge. Having a permanent continuing residence in Washington, DC and having changed her legal domicile in 1987, removing herself from the voting registry of Dade County, Florida or anywhere in Florida, and having had only a temporary residence there she had the right to access to federal court by diversity of citizenship with all defendants and the Estate.

The foregoing explains very clearly that Plaintiff's only reason for being in Miami, Florida after 1977 was the necessity for her to protect her property interests in the estate of her parents.

After both cases were dismissed in federal court, and Plaintiff filed appeals in both and had filed both in District Court simultaneously, Plaintiff returned to her permanent residence in Washington, the cases having been filed in 1992, and her return in 1993.

STATEMENT OF THE CASE IN DISTRICT COURT

This suit is filed five years after Plaintiff declared her relinquishment of legal domicile in Miami, Florida and the declaration that her residence in Washington is now her legal domicile. Title 28, Sec. 1332 permits such suit in federal court where plaintiff's legal domicile is in a different state than all the defendants.

Both cases were assigned to Senior Judge Clyde C. Atkins. Plaintiff filed a motion for the Judge to hear both cases but he assigned them each to a different magistrate.

First, Plaintiff had difficulty in

service by process server against Alvin and each of the three issue of his in Miami. The process server went to Paula where there was a party and two men came to the door and said she had moved away. The two men were her husband and Karen's new husband. Pl. returned with the process server who made a return on the first attempt, and because Karen had a new address (a house she had bought for herself and new husband with the distribution) which Plaintiff did not know his name, and Betsy had an address which Plaintiff had to spend considerable time to uncover, with her husband, the process server was told to serve all the complaints in both cases, for Alvin, and her two sisters on Paula. Plaintiff waited nearby and Paula threw them all on the lawn while he made his announcement.

It was impossible to serve Alvin because his wife had died in 1985. He lived behind a high fence and the property was filled with high trees which he grew. There was no doorbell or light on the steet, and the process server would not jump the fence. Moreover, the house could not be seen and having sold his business and business building in 1985 for $431,000 he now traveled selling several patented gardening products he manufactures and patented.

Melvin Trute filed a Motion to Strike service which the Magistrate granted. Weksler filed an Answer presumably on behalf of Paula but denying the charges of the Complaint on behalf of all the defendants. Plaintiff could not go to trial against one Defendant, and Alvin is the one with probably a million dollars. Moto hold the Answer good as against all

was denied by the Magistrate; motion to serve notice by publication was denied by the Magistrate. Magistrate Turnoff did his best to stop the suit.

The companion case had been assigned to Magistrate Bandstra, this Court no. 95-914.

The Judge of the case, Senior Judge Clyde C. Atkins, probably well over the age of 70, who had been presiding over many public issue cases such as the rights of the homelss to live on the street, set this cause for pre-trial conference at which Plaintiff appeared, and Paula with attorney Weksler. They stood together on one side: Plaintiff on the other. Despite the microphones the Judge understood nothing of what was said. Plaintiff tried to explain the issue of service not having been made on all the defendants and Weksler having answered for all. There was no understanding and no relief from the Judge. His only concern was that the parties should have prepared pretrial schedule. BUT THE CASE WAS NOT READY FOR TRIAL WITHOUT SERVICE ON THE DEFENDANTS.

He also had not recognized who was the Plaintiff and the defendant and responded to Plaintiff that "she could act pro se" meaning Paula, but Paula was there with Weksler as her attorney.

Weksler raised the issue of domicile. The judge said that is evidentiary. He withdrew the notice for trial and directed the issue of domicile to the Magistrate Turnoff who did not plan to hold an evidentiary hearing. Plaintiff move that the Judge wait for this case

while the issue of diversity would be heard by Magistrate Bandstra in the companion case since Bandstra had already set hearing on that case as was appropriate if there was any question on domicile.

Before the Report was rendered by Magistrate Bandstra the Judge again set this case for trial. Attorney Weksler who was served with the Notice of Trial moved to have himself substituted by attorney Martone, who had filed a motion to dismiss for Betsy Nieves although there was no return of service for Betsy in the court file. Plaintiff had already moved for a default against Betsy, which is probably the reason attorney Martone filed his motion to dismiss. His motion was late. She knew about the suit when her sister Paula was served and her Answer was due when Paula's was filed. The default should have been granted because a defendant cannot enter a case at will, but must abide by federal rules.

The Judge dismissed the case based on the motion of Alexander Martone for Betsy Nieves, who should have already had a default entered against her.

After Judge Atkins was served notice by Plaintiff that the Report of Magistrate Bandstra was awaited he withdrew the Notice of Trial and when the Report and Recommendation was made he denied the motion of Plaintiff asking for a complete review de novo as provided by federal Rule 72 (b) " The district judge to

whom the case is assigned shall make novo determination upon the record, or after additional evidence, of any portion of the magistrate's disposition to which specific written objection has been made in accordance with this Rule."

The Magistrate's Report was a jumble of misinformation and refusal to accept the proved existing continuous physical residence of Plaintiff in WAshington as her declared domicile. Instead the Report compares a refusal to divulge the address in Washington or to divulge the address of Plaintiff's temporary residence in Miami because the defendant's are her enemies and she doesn't trust Ap22 them. And although the Magistrate gave the defendants the opportunity to take a deposition thinking they would make some great discovery- they did not and still did not produce any proof that she not have a physical residence in Washington. They questioned her having a Florida license tag which she explained that she drove the car in Florida, titled it in Washington but if it had out-of-state tags she would have to pay a $400 tax to bring it into the State. Ap23&24;

The Magistrate's Report even misstates that the eminent domain cause was completed after five years from 1972 and she returned to Washington, No, her mother died in 1977 and she had just had a trial on the issue of necessity which was won, and then the condemdnor took an appeal, and she did not return to Washington then, except for a few days. The eminent domain case continued until 1984 after the Estate of Maurice was opened and Plaintiff continued under the heirship agreement to litigate that case as

See Mag. Report,914 PetApp,p 11,12,13

described above, and the citation of the second appeal of the jury verdict is sufficient evidence of that. The Report further states other misinformation, that she has "continuously spent the last sixteen years embroiled in litigation concerning the probate of her parent's estates." She was engaged in the eminent domain litigation from 1973 to the deaths of her parents in 1977 and 78 and then for the Estate until August 1984 when the condemnor took possession of the residence. She was engaged in the estate probates from August 1977 and continuing to this day.

Her campaign brochure lists her educational accomplishments but they were not acquired in 1986, but her last studies on scholarship from the U. of Miami to study International Law was in 1958. The organizations she named on the brochure she had belonged to over a lifetime. She was not now a a member of any of them at the time of filing the lawsuit in 1992.

The Magistrate who had been on the Court for a few years- five- and a lawyer as an Assistant Attorney-General befor had little knowledge of the usual requirments of a suit or the general knowledge attributed to lawyers. The defendant attorneys also lacked that kind of knowledge, one of them offered that residents of the District of Columbia not being residents of a State lose the right to enter federal court. A statement the Magistrate grasped upon at once until it was corrected by Plaintiff.

The Report finds it significant that Plaintiff has a post office box in Miami Beach and has an answering service therefore she is domiciled in Florida.

In reading the Report Plaintiff has the impression that it was prepared by a female clerk who entered all this information hoping that the good judge would pick it up and reverse it.

NO LITIGANT SHOULD BE SUBJECTED TO A JUDGE WHO IS SO OBVIOUSLY CONFUSED AS WAS THIS JUDGE, AND WHO DENIED PLAINTIFF HEARINGS BEFORE HIM ON THIS SUBSTANTIVE ISSUE DETERMINING HER RIGHT TO ACCESS TO FEDERAL COURT WHICH IS HER CONSTITU - TIONAL RIGHT

Plaintiff did not <u>run for judge</u>. Plaintiff ran against a judge who came up for election who was the Judge who interfered in the estate and appointed Sam Smith and Milton Kelner. She considered him incompetent (he had previously been an administrative judge in the criminal division in county court, and was reassigned to the probate division which had been redelegated from county court to circuit court by new state law. He no real experience as a judge or a lawyer, in civil or probate jurisdiction)

Plaintiff did not change her intention to return to Washington. She had never before run for Judge, and could have been appointed years before if she wanted it. Florida law requires a Judge to retire at age 70. However, if she had defeated the Judge she could have been installed and then resigned. In Florida once a judge is defeated for re-election he can never be a judge again.

And in Florida a state judge must resign at age 70. Plaintiff was 68 and could have no more than 2 years in office if she even stayed. In fact that issue came up in a question from a female attorney who obviously wanted to vote for Plaintiff who was speaking before a Bar lunch-

luncheon. "What good will it do if you must then resign at 70" Plaintiff responded " You will be able to seek the appontment of a qualified Judge replacement to the one in office." As a result of her run against the judge attorneys Weksler and Rosen called the Miami Herald and told lies about Plaintiff painting her as someone who was wrongfully involved in the EStates which the paper printed, and later Plaintiff in an article by the Editorial page editor found him stating that his best friend is a lawyer who is the best friend of that incumbent judge. Perhaps those lies are what influenced judges against her.

The Report states the Magistrate doesn't believe her. He doesn't believe the proof because it suits him not to believe.

Plaintiff has the right to decide what is her domicile. The Magistrate might have met Plaintiff in one of the ten countries she was in between 1955 and 1966 and not believed that she was nevertheless an American citizen because he didn't want to believe it. He was applying for appointment before a committee of lawyers for appointment as a federal judge. There were five lawyers opposing Plaintiff and they might have some input against him if he held in her favor, and that is why he ruled against her, paying no attention to the facts. Plaintiff could have had her primary physical residence in Miami and decided to move it to any other place the day before filing the suits and it would have been a valid change of domicile. As it is she had made the change five years before, and since she already had a permanent residence she did not have to change anything other than give up her voting rights in Florida, which she did immediately after her last vote in 1986. But he did not challenge that

she lived permanently in Washington working every day in federal agencies and was not in Miami but claimed it as her legal domicile although she had no residence there other than her parents' home. Plaintiff could own a residence in twenty different places and decide which one is her domicile and not own any,and change her domicile as often as she wants. The only thing she can't do is claim domicile in one state and vote in another.

Supreme Court case, Morris v. Gilmer states it very clearly, 129 US 315, 328 SCT 289, 32 LED 690, 1889, that every citizen has the right to change domicile whenever they wish with no period of residence necessary.

Federal Rule 72 (a) provides that only non-dispositive issues can be assigned to a magistrate for disposition, and plaintiff did not consent toa Magistrate was repeatedly denied hearing by the judge while he was setting this case for trial, as the pleadings prove.

Plaintiff has been deprived of her due process right to a competent judge and a hearing before a competent judge. as Rule 72 provided she should have.

A reading of the Magistrate's Report and a comparison of it with the multitude of written evidentiary proof filed by plaintiff, some of it in the Appendix of the Petition in this Court in case 95-914 and the Appendix in her Reply, and in the Appendix in this cause, and the Complaint in both cases, and her testimony shows the Magistrate's Report to be a hodgepodge of misstated information and refusal prejudicially to accept the proofs.

Numerous of the people employed in this Supreme Court live in other states but work every day at the Supreme Court

and one woman in the Clerk's office drives from the State of West Virginia every day and back. This is probably true of some of the Justices of this Court, and it may also be that some Supreme Court Justices retain their domiciles in the State from which they originally came although working every day and for many years of their lives at this Court.

Samuel Smith,since his graduation from law school in 1961,worked every day at his brother's law firm. Sam has his home in Miami, but the law firm is on Miami Beach, a different municipality. In the years since 1977 with her enforced stay in Miami Plaintiff would have been happy to be able to drive from her Washington residence every day and not have to establish the cost of another residence.in Miami.

THE APPEAL IN THE ELEVENTH CIRCUIT

This case, 93-5022 and 93-5023 were filed simultaneously in the district court and on appeal. Plaintiff moved the same appeal court panel review both. Plaintiff raised all the issues of Rule 72, the confusion of the district judge, the lack of service on all defendants, the late filing of Martone for Betsy, and all issues raised here, and presented the irrefutable evidentiary proof of her legal domicile, and requested oral hearing. The court denied all motions and oral argument in its final ruling. Shortly before the ruling they had held arguments in Miami where all the defendants live and could have notified Plaintiff to appear.

The appeal court affirmed the district court with no citation of law, without addressing any of the issues of lack of due process of Rule 72, 73: Petitions for Rehearing were lost by the Clerk,which entered the mandate. Appellant had to refile the Petitions and start mailing everything certified. The Court then denied Appellant's motion for expedition of their ruling so that she could bring this case for review at the same time as the one in this Court on which the appeal court had entered its decision in August.Apl

The case of Hawes v. Club Ecuestre Commandante, 598 F2d 698, 1st Cir,1979 cited by the Magistrate,in support of his decision,in fact supports Plaintiff. There the appeal court reversed a district court which denied diversity on similar kinds of facts. The only time that a change of domicile is denied is when a real physical domicile has not been created. Plaintiff indisputably proved she had a physical domicile since January 1963, never removed, in Washington, D. C. although she had been declaring a former physical domicile where she no longer lived on a daily basis, and from which she had physically removed her property. She had the right to declare her existing physical domicile in Washington as her one legal domicile at any time she wished as long as she removed her legal voting rights from the former, which she did, five years before filing these suits in district court.

The appeal court did not bother to read the briefs and review the facts. They would have seen the completely false statement that Plaintiff did not file the insurance policies. They had the complete file in which Plaintiff had filed the 1st page of the Homeowner's policies for '89, '90, '91,'92- which was unncecessary.

A person can't get homeowner's insurance without a home. And who would pay expensive insurance premiums unnecessarily. Then there is the matter of liability insurance to cover guests and workmen.

Plaintiff did not provide the following information for fear it would totally confuse the Magistrate even more and because it was an intrusion into her personal affairs which already were intruded.

In 1969 Plaintiff became enthralled with the new idea of a planned town and bought a tiny unbuilt townhouse in Columbia Maryland with no intention of ever living in it in the immediate future. She did no furnishing, but wrote to daughter Stacie who had just married that she could use it hoping she would. Stacie declined and Plaintiff rented it for more than a year and then sold it. Although Plaintiff owned it she did not become a citizen of Maryland even though she paid real estate taxes and argued about them before the Tax Assessor and became involved in the Owner's Assoc. Plaintiff lived in a rented apartment in D.C. although she slept on the floor in the townhouse once or twice. That inexpensive tiny house is worth 3 times the cost today. In 1969 Plaintiff claimed domicile in Miami.

In 198o Plaintiff bought a lot at a ski resort in NOrth Carolina. She did plan to use it as soon as she returned to D.C. and to build a house on it. In January 1981 she took daughter Stacie and grandson Blaine there for a quick weekend to choose the lot. Stacie skiid. She never built the house but owned it for years without being there, paying taxes. But she is not domiciled in North Carolina and never has been. It is because of the continuous litigation in the Estates that Plaintiff could not use that property.

The evidentiary importance of this information is that the house in Columbia, Md. is 45 minutes East of D. C., and the ski resort in North Carolina is due West of D.C. Neither is near Miami, Fla. This indicates the intention of Plaintiff to remain in the D.C. vicinity even while litigating for the Estates in 1981 in Miami. And Plaintiff really on buying the ski lot intended to spend her retirement yeaRs there.

The only meaningful intention is that on the day the two lawsuits were filed in Miami district court Plaintiff had a permanent residence in D. C. which she had declared her domicile withdrawing any legal domicile from Miami, Fla. in 1987. The suits filed February 7, 1992.

Plaintiff requests this Court to accept the Petitions just as it did in the case of Tina B. Bennis v.State of MIchigan, recently.

CONCLUSION

The Magistrate's Conclusions were clearly erroneous which the District Judge and appeal panel acepted without review which is the reason this Petition should be granted.

Respectfully submitted,

Edith Broida
Pro Se
P. O. Box 5941
Washington, D. C.
Tel: 301-681-2050
(Answering service)

Supreme Court, U.S.
FILED
JAN 29 1996
CLERK

95-1224

No. 95-

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA,

Petitioner,

v.

ALVIN EDWARD HOROWITZ, et al,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI
APPENDIX

Edith Broida , J. D.
Pro Se
P. O. Box 5941
Washington, D. C.
20016
301-681-2050

APPENDIX

1. Appeal court Order denying expedited ruling, 12/29/95 — 1
2. Appeal court Order denying Petition for Rehearing 11/6/95 — 1
3. Appeal court Order denying Motion for Oral Hearing on Petition for Rehearing 11/6/95 — 2
4. Appeal court Order affirm-dismissal by lower court 4/27/95 and denying motions for oral argument — 3
5. Appeal court Order denying motions to strike briefs 4/27/95 — 4
6. District Court Order Granting Motion To Dismiss 6/8/93 — 5
7. Letter Broida to Internal Revenue in Philadelphia 10/24/1988 — 5A
8. Letter from Liberty Mutual Ins. Co. August 17, 1992 — 6
9. Letter from Dade County Supervisor of Elections 9/11/92 — 7
10. Letter from accountant August Weintraub to Broida in Washington 4/10/1967 — 8
11. Letter from Broida to Morris Schneider from Washington - 4/1/1967 — 9
12. Letter from Ann Horowitz to daughter Broida in Washington - May 15, 1973 — 9
13. Letter from Broida from Washington to Mount Sinai Hospital Miami Beach, Fla. 8/22/1972 — 10
14. Letter Broida from Washington to Mother Ann Horowitz Miami Beach, Fla., 7/30/1974 — 12
15. Letter from Model School Division, Washington to Broida in WAshington 3/19/1965 — 13

APPENDIX (cont'd)

16. Affidavit of Edith Broida and Alvin E. Horowitz filed in probate 78-1553 June 21, 1979 14
17. Affidavit of Paula Horowitz Roth, filed in probate 78-1553 , August 26, 1983 15
18. Excerpt 420 So Rep 2d 936 Estate Maurice Horowitz v. City Miami Beach, 10/26/82 17
19. Letter from Professor Floyd Wright, U. Miami Law School, 2/1/58 18
20. Letter from Congressman Morse on behalf of Broida to Dept. of Labor 8/3/65 20
21. Letter from State of Vermont Administrator on behalf of Broida to Dept. of Labor August 2, 1995 20
22. Plaintiff's Motion to give Washington address to Magistrate confidentially,1992 22
23 . Letter from Broida to D.C. Dept of Transportation from Miami, Fla., May 27,1987 23
24. Affidavit of Martha Neham Edelstein, filed in District Court, 9/14/92 25
25. Affidavit of Phyllis Shampanier filed in District Court April 12, 1993 28
26. Letter from attorney Tobias Simon in Miami to Broida in Washington-3/23/64 30

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 93-5022

Filed
Dec. 29,1995
Miguel J. Cortez
Clerk

EDITH HOROWITZ BROIDA,
Plaintiff/Appellant,
versus
Alvin Edward Horowitz,
a/k/a Alvin Alvyn,
Stephen Ronald Horowitz,
Paula Horowitz Roth, individually
and as assignee of Stephen
Ronald Horowitz,
Karen Horowitz Kaplan,
Betsy Horowitz Nieves.
Defendants/Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT OF THE SOUTHERN DISTRICT OF FLORIDA

ORDER:
Appellant's motion for an expedited ruling on the Petition for Rehearing is denied.

s/s J. L. Edmondson
UNITED STATES CIRCUIT JUDGE

Pet. Note: Above order entered seven weeks after Nov. 6 denial of rehearing. (Below)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 93-5022

Filed
Nov 06,1995
Miguel J. Cortez
Clerk

EDITH HOROWITZ BROIDA,
Plaintiff/Appellant,
versus
ALVIN EDWARD HOROWITZ,
a/k/a Alvin Alvyn,
STEPHEN RONALD HOROWITZ,
PAULA HOROWITZ ROTH, individually
and as assignee of Stephen
Ronald Horowitz,
Karen Horowitz Nieves.
Defendants/Appellees.

On Appeal from the United States District Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING
Before: Anderson, Edmundson, and Carnes
Circuit Judges.
PER CURIAM:
The petition(s) for rehearing filed by appellant Edith Horowitz Broida is denied.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 93-5022 Filed Nov.06,1995
EDITH HOROWITZ BROIDA,
versus Plaintiff/Appellant,
ALVIN EDWARD HOROWITZ, a/k/a
Alvin Alvyn,
STEPHEN RONALD HOROWITZ:
PAULA HOROWITZ ROTH, individually
and as assignee of Stephen Ronald
Horowitz;
KAREN HOROWITZ KAPLAN;
BETSY HOROWITZ NIEVES,
Defendants/Appellees.

On Appeal from the United States District Court for the Southern District of Florida

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BEFORE: ANDERSON, EDMONDSON AND CARNES,
Circuit Judges.
BY THE COURT:
Appellant's motion for court to include timely filed letter of new evidence relating to domicile mailed May 22, 1195 is GRANTED
Appellant's new supplemental evidence to domicile construed as motion to supplement is DENIED
Appellant's motion for oral hearing on petition for rehearing is Denied.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 93-5022
Non-Argument Calendar
D.C. Docket No. 92-0298-CIV- CCA

Filed
U.S. Court of Appeals
Eleventh Circuit
APR 27 1995
Miguel J. Cortez
CLERK

EDITH HOROWITZ BROIDA,
Plaintiff-Appellant,
versus
ALVIN EDWARD HOROWITZ, a/k/a
Alvin Alvyn;
STEPHEN RONALD HOROWITZ;
PAULA HOROWITZ ROTH, individually
and as assignee of Stephen
Ronald Horowitz;
KAREN HOROWITZ KAPLAN;
BETSY HOROWITZ NIEVES,
Defendants-Appellees.

Appeal from the United States District
Court for the Southern District of Florida
(April 27, 1995)
Before ANDERSON, EDMUNDSON and CARNES,
Circuit Judges.

PER CURIAM:

Edith Broida appeals the district court's dismissal of her pro se action for lack of subject matter jurisdiction. Because there was no diversity jurisdiction, we affirm. In addition we deny each of the appellant's motions.*

AFFIRMED.
Motion DENIED.

(1) Appellant's motion and renewed motion for oral argument;
(2) Appellant's motion to strike brief of appellees Betsy Nieves and Paula Roth;
(3) Appellant's motion to file separate briefs.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-5022

FILED
US Circuit Court of Appeals
ELEVENTH CIRCUIT
APR 27,1995
Miguel J. Cortez
Clerk

EDITH HOROWITZ BROIDA,
Plaintiff-Appellant

versus

ALVIN EDWARD HOROWITZ, a/k/a Alvin Alvyn
STEPHEN RONALD HOROWITZ,
PAULA HOROWITZ ROTH, individually and
as assignee of Stephen Ronald Horowitz,
KAREN HOROWITZ KAPLAN,
BETSY HOROWITZ NIEVES,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Florida

ORDER:

Appellant's motion to refer her motion to strike Appellees' brief "to the panel that hears and reviews the appeal," construed as a motion to refer the motion to strike to the Screening Panel, is granted.

Appellant's motion to strike the brief filed by Appellees Roth and Nieves is denied.

s/s J. L. Edmondson
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

EDITH HOROWITZ BROIDA and
AS EDITH BROIDA,
Plaintiff,
vs.
ALVIN EDWARD HOROWITZ, et al.,
Defendants.

Case No92-0298-CIV-ATKINS

Filed June 8 1993
T.G.Cheleotis
Clerk US Dist Ct.
SD of Fla-Miami

ORDER GRANTING MOTION TO DISMISS

THIS CAUSE is before the court on defendant Betsy Nieves' Motions to Dismiss (DE63) and(DE80)[1] and Magistrate Turnoff's recommendation that the motion to dismiss be granted (DE66). This court deferred ruling on Nieves' motion to dismiss the instant case pending resolution of the issue of domicile raised in various motions to dismiss filed in a related case, 92-997-CIV-ATKINS. Recently, the undersigned adopted Judge Bandstra's Report and Recommendation entered on May 20,1993 in 92-997-CIV-ATKINS, in which Judge Bandstra determined that plaintiff was a citizen of Florida at the time she filed that action and recommended that the action be dismissed for lack of diversity and federal question jurisdiction. Based upon this determination, it is

ORDERED AND ADJUDGED as follows:

(1) The Magistrate JUdge's Recommendation (DE66) that the Motion to Dismiss be granted is hereby ADOPTED and made the order of this court. Accordingly, Nieves' Motions to Dismiss(DE 63 and 80) are GRANTED: and

(2) This action is hereby dismissed

with prejudice based on this court's lack of diversity jurisdiction, as all parties are citizens of Florida.

It is further ORDERED AND ADJUDGED as follows:

(3) Plaintiff's Motion to Strike, filed on May 25, 1993 in conjunction with her response to the motion to dismiss is DENIED;

(4) Bernard Weksler's Motion to Withdraw as Counsel for One Defendant is GRANTED. Bernard Weksler shall be replaced by Alexander Martone as attorney for Paula Roth.

DONE AND ORDERED at Miami, Florida, this 5th day of June, 1993.

s/s Clyde Atkins
SENIOR UNITED STATES DISTRICT JUDGE

Department of the Treasury
Internal Revenue Service
Philadelphia, Pa. 19255

In reply refer to:
28600646
Oct. 24, 1988
LTR 206C

EDITH H. BROIDA
P. O. BOX 390751
MIAMI Beach, Fl 33119

Form Number 1040
Tax Period:
Dec. 31, 1984

Dear Edith H. Broida:

Thank you for your inquiry of June 10, 1988 about your refund check. We share your concern and hope the matter will be cleared up soon. The check is being traced. We apologize for the delay. If check has not been cashed or destroyed, you will receive your refund within 90 days from the date of this letter. However if an unauthorized person has cashed the check, a time-consuming investigation may be necessary before a new one can be issued.

Petitioner's Note: Letter from Internal Revenue Service office which handles tax returns for District of Columbia where petitioner filed tax returns.

CENTERPOINT II
SUITE 500
4000 Legato Road
Fairfax, Virginia 22033-4003
Telephone (703) 385-4444
FOR MAIL ONLY
P.O. Box 900
Fairfax, Virginia 22030-0609

LIBERTY
MUTUAL

August 17, 1992

This is to certify that Liberty Mutual Insurance Company, Fairfax Virginia office has been issuing Homeowner's Insurance policies on the Washington, D. C. residence of Edith H. Broida every year from 1976 to and including 1992.

This Virginia office services the Greater Washington area.

In addition Mrs. Broida's automobile has been continuously insured by this office since before 1976.

Service Manager
Title

/S/ Sheila Mitchell

METROPOLITAN DADE COUNTY, FLORIDA
METRO-DADE (Logo)

(LOGO)
METRO DADE CENTER
OFFICE OF THE SUPERVISOR OF ELECTIONS
SUITE 1910
111 N.W. 1st Street
Miami, Florida 33128-1962
306-375-5563

Mailing Address:
P.O.Box 012241
Miami, Florida
33101-2241

September 11, 1992

To whom it may concern:

The Metro-Dade Elections Department has records showing that Edith E. Broida last registered to vote on March 27, 1950. Anytime an elector does not vote in a two year period a notice is sent out to keep the elector's registration records active.

No response was made to a notice sent to Ms Broida, therefore her record was purged in 1989.

The last time she voted was November 4, 1986.

Very truly yours,

/s/Milton L. Collins
Milton L. Collins
Assistant Supervisor of Elections

August Weintraub & Co.
Certified Public Accountant
April 10, 1967
Edith Broida
824 New Hampshire Avenue, N. W.
Washington, D. C.
Dear Edith:
Enclosed is a copy of the U. S. Individual Income Tax Return for your parents for 1966. Your father has suggested that we send this to you for review. This return must be filed by April 17, 1967, so please advise us before that date if it meets your approval.

Very truly yours,
s/s Leslie J. August
Certified Public Accountant

April 1, 1967

Mr. Morris Schneider
171 Lincoln Road
Miami Beach, Florida
Dear Mr. Schneider:

My parents have informed me that you called regarding a prospective buyer. Would you please send me the information regarding this.I'm afraid we cannot give you any further financial information than you now have and if the buyer is interested in this business from the truthful information which had already been provided you and from your own knowledge of the long and excellent reputation of this business on Lincoln Road then the next step is for him to come to Miami Beach and speak with the owners and their representatives. We could provide a very nice financial statement to lure them but that would not make the sale after all, would it. What they were buying is a long established and nationally known name and reputation, a location, and a good rental.

May I hear from you by return mail as to the nature of the inquiry and what action you have taken.?

Very truly yours,
s/s Edith Broida

Mrs. Edith Broida
825 New Hampshire Avenue, N. W.
Washington, D. C.

Postmark - May 16, 1973 (Excerpts) Miami
Ann G. Horowitz
1931 Meridian Avenue
Miami Beach, Florida 33139

Tuesday, May 15, 1973

Dear Edith

Hope you are well. Received the change purse. I like it and also the beautiful card you sent. I may frame it.

I gave Alvin the shares.

I said to him I hope I'm not making a mistake, and I still say it. I wanted to give it to him, and as you always said give it now, if you can so that's what I did it was in his name and my name. When I bought it he was very young. But he's all for Marsha and his children. I still don't know if he feels for us,You, Dad, his mother, and Stacie.

I also gave him the balance of Valueline.

Love,
Mother

Envelope addressed: Mrs. Edith E. Broida
Washington, D. C.

WASHINGTON, D. C.
202-333-1356
August 22, 1972

Ms. Evelyn Lester
Patient Account Counselor
Mount Sinai Hospital
4300 Alton Road
Miami Beach, Florida 33140

Re: Maurice Horowitz
admission 317164

Dear Mrs. Lester:
Thank you for your letter of July 21st in reply to mine of July 3rd. You have sent a corrected bill with adjustments to the original. It appears now that the total hospital bill aside from separate fees of anaesthetist, radiologist, surgeon, physician, private nursing is $1706.90. To the original bill of $1662.40 an addition has been made of an unitemized $44.50.

Your charges are really shocking. Have you heard that hospitals are decreasing charges due to the outcry against them?

You have received payment from Medicare and Blue Cross of $1253.50 and from the patient of $355.50. He has also paid separately for the six shifts of private nursing.

Three years ago this patient, admitted to your hospital for the surgery performed this time, was placed in a semi-private room with a dying man. Because of the excitement surrounding this man day and night the patient suffered a heart attack, his first in his then 75 years. Instead of receiving the minor prostate correction he was scheduled for he was placed in intensive care for several days and then released. He suffered unnecessarily and the hospital profited from this useless stay.

This patient also develops lung congestion from too cold air-conditioning. For this reason when the prostate correction was scheduled again it was determined he would need a private room in order to survive the operation and the hospitalization.

The patient had a reservation at the hospital for three weeks prior to admittance:

1. Why was he admitted on Wednesday 3/15 at 1:00 P.M. to then wait until 8:00 the next morning before anything was done for him expending $80 for the privilege of walking the halls?

(Paragraphs 2 on group nursing charges, 3, and 4 on same, 5 on medication charges are deleted to eliminate length of this letter.)

Please supply me with the following:

1. Itemized list of special medical supplies - $45.00
2. Justification for charges of $96 for drugs given aside from intravenous and inhalation therapy.
3. Itemization of additional $44.50 added to original bill.
4. Charge of $49.50 for group care on 3/16 when patient was in testing and ambulatory all day.
5. Charge of $80 for admission one day before needed.

If there is justification then the patient will pay what is justified in addition to the $1608.50 you have already received for what is generally considered confinement for minor surgery.

Very truly yours,
s/s Edith Broida - Washington, D.C.

(Copy of Petitioner's Letter to her Mother, from Washington to M.B.)

Dear Mother, 7/30/74

Thank you, I received the $500. It helps a little but not much. In the past year I spent 8 months in Miami. During that time I still have to pay rent on my apartment $228 a month, telephone $10 a month, gas $200 a month-a total $240 a month-for 8 months that is $1920, which is already more than you pay rent on your house for a whole year. Your taxes are your rent. The three months I was there last time or any time I disrupt my own life completely. When I come back I have all kinds of problems because I haven't been home that then take me months to straighten out. Then there is the cost of the fare, tips, food each trip is at least $220 for that. What you gave me when I was there only barely covers some things- The cars I rent. Here I have my car in storage for which I pay $27 a month.

Then the strain on me there generally sends me to the doctor when I get back with something.

Last time on the trip back I got off the train with a flaming red right eye.

Ann Horowitz kept daughter Broida's letters to her with the envelopes.

SUPERINTENDENT OF SCHOOLS
FRANKLIN ADMINISTRATION BUILDING
13th and K Street N.W.
Washington, D. C.

Model School Division

March 19, 1965

Mrs. Edith E. Broida
824 New Hampsire Avenue, N. W.
Washington, D. C.

Dear Mrs. Broida:

A board order appointing you as Coordinator of the Summer Enrichment Program(Model School Division) was submitted to the Board of Education at the meeting held on March 17, 1965.

Before you can be placed on the payroll, it will be necessary for you to come in and sign certain papers. Please call me at Sterling 3-6111, extension 231,232 and let me know when you can come in to sign these papers.

Yours truly,

/S/ Doris P. Lee
Doris P. Lee
Administrative Aide
Model School Division

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

PROBATE DIVISION
Case No. 78-1553
Division 02 (Judge Blanton)

Filed June 21, 1979
Clerk, Dade County
Probate Division

In re: ESTATE OF
MAURICE HOROWITZ,
Deceased.

AFFIDAVIT

State of Florida)
County of Dade) SS:

BEFORE ME, the undersigned authority, a duly authorized Notary Public of the State of Florida, personally appeared affiants, who being duly sworn upon oath, make this Affidavit; they depose and state:

That they are Edith Horowitz Broida and Alvin Edward Horowitz respectively and are the only two children of decedent Maurice Horowitz (Moe) and his spouse Anne Gottlieb Horowitz deceased seven months prior to decedent herein, and they are both respondent-petitioners in the within cause.

That Edith Horowitz Broida is the older of the two children and has a long-term relationship with decedent herein and his spouse as their attorney, tax preparer, companion, and is attorney for the estate of his spouse also before this Court, and that she is the person most familiar with all the circumstances of both estates of both decedents giving her special knowledge of this cause.

That by agreement she represents all the respondent-petitioners being herself, the other adult child, and his four children who are grandchildren

of decedent and his spouse, as attorney in this case.

Said affiants for themselves and the other four respondent-petitioners claim that her represntation and her testimony are essential to their cause and they would suffer a substntial hardship were she to be precluded from serving as attorney and testifying as a party if and when necessary.

FURTHER Affiants Saith Not.

s/s Edith Horowitz Broida
EDITH HOROWITZ BROIDA

s/s Alvin Edward Horowitz
ALVIN EDWARD HOROWITZ

I hereby certify that on this day, the affiants above described executed the foregoing instrument before me, and acknowledged that they executed the same freely and voluntarily for the purpose therein stated. Witness my hand and official seal at Miami, Dade County, Florida , this 21st day of June, 1979.

s/s Belinda Erst
Notary Public, State of Florida

My Commission Expires Oct 10, 1987

IN RE: ESTATE OF Maurice HOROWITZ, DECEASED.	IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA PROBATE DIVISION CASE NO. 78-1553 Div. 04 Newbold

AFFIDAVIT

Filed 8/26/83 Clerk Probate Div.

State of Florida)
County of Dade) SS:

There is no necessity for this Affidavit, however, in order to resolve any question, I, Paula Horowitz Roth, daughter and second issue of Alvin Edward Horowitz, thirty-six years of age, employed as an executive office manager, a resident of Dade

County, Florida, do hereby:

Reaffirm that Agreement dated April 3, 1978 and which is filed in this cause, into which I entered and consider binding upon me, my brother Stephen Ronald Horowitz, my sisters Karen H. Barnett, Betsy Jo Horowitz and my father Alvin Edward Horowitz, and my aunt Edith Horowitz Broida by which Agreement I am my brother and sisters assigned all our right, title and interest in the Estate of our grandfather Maurice Horowitz, equally to our father Alvin Edward Horowitz and Aunt Edith Horowitz Broida who are brother and sister and the only two children of our grandparents, in accordance with the terms of that Agreement, and further

I reaffirm the Waiver and Consent of 1978 and all other instruments which I signed on their behalf in this Estate.

Having sworn to this Affidavit before the undersigned authority, further I saith not.

Witnesseth:
s/s Jacqueline Uganiya
Address:
Faith C. Madison
Address

s/s Paula Horowitz Roth
Paula Horowitz Roth
7803 N.W. 22 Street
Miami, Fla.

On August 12, 1983 before me, the undersigned, a Notary Public in and for the State of Florida personally appeared before me Paula Horowitz Roth known to me to be the person whose name is subscribed to the within instrument and executed same before me. Witness my hand and official seal, this day.

S/s(Illegible)

My Commission Expires

Excerpts from 420 Southern Reporter, 2d, p 936, Fla, appeal of jury verdict in eminent domain trial on residence of decedent Maurice Horowitz. Appeal taken by Petitioner Broida.

ESTATE OF MAURICE (MOE) HOROWITZ, et al, or Edith H. Broida and Alvin Edward Horowitz as Personal Representatives of Estate of Maurice (Moe) Horowitz, Deceased, Appellants.

v.

CITY OF MIAMI BEACH, A FLorida Municipal corporation, Appellee.

No. 81-1919

District Court of Appeal of Florida, Third District

Oct. 26, 1982

Edith Broida, Miami Beach, in pro per

Norman Malinski and Steven D. Ginsburg, Miami, for appellee.

Before BARKDULL, SCHWARTZ, and JORGENSON, JJ.

PER CURIAM.

In this condemnation case, the property owners contend it was error for the trial court to disqualify their primary real estate appraiser's expert testimony. We agree and reverse.

Florida's constitutional guaranty of full and just compensation in eminent domain actions requires that courts take into account all facts and circumstances which bear reasonable relationship to loss occasioned owner by virtue of his property being taken

---

UNIVERSITY OF MIAMI
P. O. Box 8087
Coral Gables, Florida
School of Law February 1, 1958

Dear Edith:

I consider it an honor to write a letter of recommendation in your behalf. I am proud of you as one of our former graduates.

Congratulations and Good Luck!

Cordially,

s/s FAW
Floyd A. Wright
Professor of Corporations Law, and
Author of the Corporate Code of the State of Oklahoma.

was (

UNIVERSITY OF MIAMI
P. O. Box 8087
Coral Gables, Florida
School of Law February 1,1958

Dr. J. Riis Owre
Dean of the Graduate School
University of Miami
Coral Gables, Florida

Re: Edith E. Broida

Dear Dean Owre:

Edith Broida has advised me that she is making an application for enrollment in the Graduate School of the University to pursue studies leading to a Master's Degree in Law, and this letter is written in her behalf.

I am attaching a list of her educational accomplishments while studying here at the University, and the Latin expression "Res Ipsa Loqutuer" (the thing speaks for itself) seems to be apropros in explaining her qualities. I'm also inclosing a page from the

June 1954, Lawyer of the School of Law magazine.

Edith took two advanced courses from me (Corporations and Corporate Procedure) and in those courses did superb work. She always impressed me as being a brilliantly intellectual, industrious scholar in every sense of the words. Her professional attitude always evidenced a pronounced quality of an analytical, legal mind, so essential in successfully handling intricate problems in law.

Reports which have reached me while she has been engaged in practice during the last four years since her admission to the Florida Bar have been very gratifying. I feel that Edith could qualify for graduate law study in the leading schools of the land. I recommend her as being well qualified in scholastic and every other ability to pursue work on an LL.M. in the Graduate School of the University of Miami.

Sincerely yours,
s/s Floyd A. Wright
Professor of Law

Petitioner's Note. The scholarship requested for graduate study was granted.

CONGRESS OF THE UNITED STATES
House of Representatives
Washington, D. C.

August 3, 1965
(Recd Aug 5,1965)

Mr. Francis Gregory
Assistant Director for Manpower
Department of Labor
1730 M Street, N. W.
Washington, D. C.

Dear Mr. Gregory:

I understand from Paul Cronin in Lowell that the meeting between shoe manufacturers in the Lowell and Lawrence areas and representatives of the Labor Department went extremely well last week.

We are grateful to you for sending Mrs. Edith Broida-- she was an outstanding participant and a credit to the Labor Department.

With every good wish, I am
s/s F. Bradford Morse
Member of Congress

Pet's Note:
Rep. Morse became an Ambassador to the United Nations.

STATE OF VERMONT
Department Of Administration
Montpelier

August 2, 1965

Mrs. Edith Broida, Manpower Administration specialist
United States Department of Labor
Office of Manpower, Automation and Training
1730 M Street, N. W. Room 400
Washington, D. C.

Dear Mrs. Broida:

It was a distinct pleasure to have had an opportunity to meet you last

week and discuss Vermont's application for a project on the state's aging population.

Your grasp of the problem in its broader aspects, as well as your competence as a federal official, were refreshing and encouraging.

The population pattern in Vermont, coupled with a restrictive tax base, comprises a difficult situation in providing all the assistance needed to the older and aging citizens of the state, not only assistance financially but in terms of devoting adequate time and efforts to their special employment and related problems.

All of us who participated in last week's discussion were pleased to find you sympathetic to the problem in all its various aspects and pleased you are handling the project application.

We look forward to your next trip to Vermont.

Sincerely,

s/s William F. Kearns, Jr

WFK/a

William F. Kearns, Jr.
Commissioner

EDITH HOROWITZ BROIDA, AND AS EDITH BROIDA,
Plaintiff,
vs.
Estate of Maurice Horowitz through Samuel S. Smith as personal representative, and other defendants.
Defendants.

United States District Court Southern District of Florida

Case no. 92-997 Atkins

PLAINTIFF's MOTION FOR COURT TO PERMIT PLAINTIFF TO FILE WITH THE COURT EVIDENCE OF HER PHYSICAL ADDRESS IN WASHINGTON, D. C. UNDER CONFIDENTIAL SEAL FOR THE COURT'S INFORMATION ALONE IN SUPPORT OF DIVERSITY EVIDENCE

Plaintiff Edith Horowitz Broida makes this Motion that she be permitted to file with the Court under confidential seal her permanent address in Washington, D. C. and the length of time she has lived at that address and paid the cost of living at that address maintaining it for her return to Washingtion after the conclusion of the litigation which has kept her in Miami since 1977.

At hearing on April 6th, yesterday Plaintiff explained to the Court that she has not divulged the address because all the defendants are not just adversaries, but'enemies' of hers and she needs to protect her safety.

The insurance company that has been insuring her residence in Washington D. C. since 1976 has presented a statement to that effect. Their office is in adjacent Northern Virginia. They have also stated that they insure her car (since her major residence is in Washington, D. C. Plaintiff has also filed with the Court the information that she registers her car in Florida since she uses it mainly in Florida, due to the necessity for her to be here because Florida charges $395 for all out-of-state cars used in Florida every year, and when in

1978 plaintiff bought a car in Florida and paid sales tax, upon registering it in Washington she had to again pay an excise tax for having brought it into Washington. She then registered her car in Florida when that State passed the law requiring payment of $100 fee for cars with out-of-state licenses used in Florida, now increased.

Wherefore, if the issue concerning this Court is the physical address of the home of plaintiff as evidence of her domicile in Washington, D. C. plaintiff will provide that information solely to Magistrate Bandstra as confidential sealed evidence not to be viewed by any of his staff or anyone else.
Attachment: Miami Herald article on new law increasing fee on out-of-state cars.

s/s Edith Broida

May 27, 1987

P. O. Box 390751
Miami Beach, Fla.

D. C. Department of Transportation
Bureau of Motor Vehicles Services
East Administration Building
301 C Street N. W.
Washington, D. C. 20001

Dear Department:
I have registered the title of my car in Florida because they require it when a car is driven there.

I have not changed my title from District of Columbia.

If they have stupidly sent you my title that you just sent me do not cancel my registration of title in District of Columbia.

If I change anything I will remove it from Florida, if there is a problem.

I'd like you to send me a Title that shows when that car was titled in D. C. and it was in 1978 around August or September. The title you sent has a new date. Send me a duplicate of the original. Thank you.

Edith E. Broida

AFFIDAVIT OF MARTHA NEHAM EDELSTEIN

STATE OF FLORIDA)
COUNTY OF DADE) SS:

Before me the undersigned authority, duly qualified as a notary public in the State of Florida, personally appeared Martha Neham Edelstein, to me known, and upon oath, duly sworn, deposes and says:

1.My name is Martha Neham Edelstein

2. I am a resident of Dade County, Florida

3.I have known Edith Horowitz Broida since 1938. We both attended the University of Miami and majored in the School of Education.

3. We have been friends continuously since then.

4. My parents were residents of Miami Beach since the early 20's.

5. I knew the parents of Edith and was in their home many times,and also in their store. I knew Edith's husband and her daughter Stacie. I have also seen her grandson Thomas Blaine.

6. Edith resided with her parents at 1931 Meridian Avenue, Miami Beach.

7. After the death of her father and she and her brother Alvin were contesting the Will prepared by attorney Harold Shapiro which was dated about a month before her father's death I stated to Edith: " I wondered if you knew that your father has been senile for a number of years."

8. I testified at the trial on the Will contest against that Last Will, called by Edith and her brother Alvin, that their father had definitely lacked his former mental

faculties and would not have had testamentary capacity to make a Will in the last five years of his life.

9. I know that Edith moved to WAshington, D.C. in January 1963. My sister lived in Maryland outside Washington. I was in Maryland to visit my sister. My sister and I both visited Edith where she lived in Washington, D. C.

10. Edith distinctly stated that she was moving to Washington to work for the federal government to try to plan programs to improve the educational system.

11. Edith has returned from Washington many times for the needs of her parents and daughter.

12. In 1967 and 1968 I saw her in the store of her parents working there and managing it because of business difficulties. She said she is there temporarily hoping to return to Washington as soon as the problems are resolved.

13. I saw her in 1971 when her grandson was born and she came down for the birth. Again she came down for her father's health, who was hospitalized with a heart attack.Again she came for a lawsuit against her parent's home by the City of Miami Beach, and came again for that lawsuit.

14. Her mother died in 1977 while she was here. Edith had a multitude of family problems. She had to take charge of her mother's 85 year old sister whose husband had died and took care of problems of that husband, his burial and his financial affairs as well.

15. Her father died in February 1978 and she has said that because of the two estates she has had to be here continuously except for quick trips back to her home in Washington.

16. Edith has always made it clear to me that she prefers to live in Washington, that she loves that City, and enjoyed her work there. I have told her many times that she should have just returned to Washington, where she most wanted to be, after the deaths of her parents.

17. She has told me that in 1987 she changed her domicile, that is, her legal residence to Washington, D. C.

Further Affiant Saith Not.

/S/ Martha Neham Edelstein
E342-554-24-958

Subscribed and sworn to before me Witness my hand and seal this 14th day of September, 1992.

/s/Inna Sandler
Notary Public, State of Florida at Large

My Commission Expires: 4/96

Notary Public
State of Florida

Inna Sandler
My Commission
#CC194323
Expires: April 16,1996
Bonded Thru Notary Public Underwriters

AFFIDAVIT
OF PHYLLIS SHAMPANIER

Before me the undersigned authority, duly qualified as a notary public to take acknowledgements in the State of Florida, personally appeared Phyllis Shampanier, to me known, who upon oath, being duly sworn, deposes and says:

1. My name is Phyllis Shampanier, and my address is 8115 S.W. 17th Terrace, Miami, Florida.

2. I am an attorney at law practicing in Dade County since 1953 when I graduated from the University of Miami School of Law.

3. I have known Edith Broida since law school.

4. I know that Edith moved to Washington, D.C. She referred several clients of hers to me when she moved. Her daughter Stacie also used my services. She had an attorney listing at my office in Coral Gables which was discontinued when I moved into a large firm on Miami Beach.

5. Several times when Edith came back to visit from Washington I asked her why she doesn't come back and join me in practice, showing her space adjacent to mine which could be joined to mine. Her reply always was that she was happy in Washington and enjoyed the work she was doing in government agencies and did not want to return to Dade.

6. I do know that she had to have a protracted stay for her parent's business in the late sixties. And I know that she has been in Miami for a eminent domain case on her parents' property, and that they died in the late 70's and she has been involved

in their estate probates and litigation, which has become another protracted stay.

7. I believe that Edith's intention has always been since she moved to Washington to be there indefinitely and not be in Florida.

8. We have corresponded and I know that she has resided in Washington and still has a residence there as she has told me.

Further Affiant Saith Not.

/S/ Phyllis Shampanier
Phyllis Shampanier

Subscribed and sworn before me.
Witness my hand and seal this
12th day of April, 1993.

/S/ Karla Haspael
Notary Public, State of Florida
at Large
My Commission Expires:
Notary Public, State of Florida
My Commission Expires Aug 25, 1994
Bonded Thru Notary Public Underwriters

Law Offices
Tobias Simon

223 Southeast
First Street
Miami32, Fla.

March 23, 1964

Edith Broida
Attorney at Law
824 New Hampshire Ave, N. W.
Washington, D. C.

Dear Edith:

When I received your letter. I realized that we hadn' seen you for some time. This explained the general sense of disquiet I have been having.

Why did you move to Washington?--and are you married yet?

I suggest you drop the whole idea. If you want a tilt at windmills, we have many important ones to throw things at.

Sincerely,
s/s Tobias Simon
Tobias Simon

TS:ev

Attorney Toby Simon was well known as a civil rights attorney, active in the ACLU and in the Florida Bar. He was a friend of Petitioner and they had worked on some of the same political campaigns and other issues.

(3)

Supreme Court, U.S.
FILED
MAR 4 1996
CLERK

NO. 95-1224

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA,

Petitioner,

V.

ALVIN EDWARD HOROWITZ, et al,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALEXANDER L. MARTONE, ESQUIRE
Counsel of Record
Attorney for Respondents
BETSY H. NIEVES and PAULA ROTH
30 S.E. 7th Street
Boca Raton, Florida 33432
Telephone No. (407) 3625402

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QUESTIONS PRESENTED

WHETHER THE RULING OF THE DISTRICT COURT DISMISSING THE PETITIONER'S CAUSE DUE TO LACK OF DIVERSITY OF CITIZENSHIP BETWEEN THE PLAINTIFF AND THE DEFENDANTS WAS CLEARLY ERRONEOUS.

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

Honorable C. Clyde Atkings, federal district court, Southern Division, Miami,Florida

Magistrate Ted E. Bandstra, Magistrate Judge

Appeal judges Eleventh Circuit Court, Anderson, Edmondson, Carnes

Edith Broida, Petitioner

Alvin Edward Horowitz, Respondent

Stephen Ronald Horowitz, Respondent

Paula Horowitz Roth, Respondent

Karen Horowitz Kaplan, Respondent

Betsy Horowitz Nieves, Respondent

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OPINIONS BELOW

The opinions below are unreported. The order of the United States District Court for the Southern District of Florida dismissing the Petitioner's action was issued on June 5, 1993 in case 92-0298 Civ. Atkins. This order can be found on page 5 of the Petitioner's Appendix. The opinion of the United States Court of Appeals for the Eleventh Circuit affirming the District Court's dismissal of the Petitioner's action was issued on April 27, 1995, and can be found on page 3 of the Petitioner's Appendix. The Eleventh Circuit denied the Petitioner's Petition for Rehearing on November 6, 1995, and this order can found on page 2 of the Petitioner's Appendix.

JURISDICTIONAL STATEMENT

The Petition falls within the Court's jurisdiction to review final decisions of the federal courts of appeal by certiorari. 28 U.S.C. @ 1251(1). The Eleventh Circuit Court of Appeals has jurisdiction pursuant to 28 U.S.C. @ 1291 pertaining to review of of a final decision by the United States District Court.

STATEMENT OF THE CASE

The respondents do not accept the Petitioner's Statement of the Case as it is self-serving, misleading and irrelevant. Lost amid the rhetoric of the Petition is the real issue at hand, which has been properly ruled upon by the District Court, and affirmed by the Eleventh Circuit. Stated succinctly, the Petitioner's case was dismissed because she failed to sustain her burden of establishing complete diversity of citizenship between herself and the Respondents. A review of the facts and the case law on this issue will show that the decisions of the lower courts on this issue were correct, and that this Petition should be denied.

Those portions of the Petition which address issues other than subject matter jurisdiction are irrelevant and do not merit a response. Thus, while the Petition seemingly presents five separate questions to the court, the Respondents will only address the single issue of subject matter jurisdiction as it relates to diversity of citizenship.

This proceeding commenced upon Petitioner filing of a complaint against her brother and his four children. The Petitioner's cause of action is based on a probate suit in the Florida state court in Dade County, Florida, that was probated in 1978. The Respondents timely filed their Motion to Dismiss the complaint alleging lack of jurisdiction due to the District Court's lack of subject matter jurisdiction.

The District Judge referred the Respondent's motion to dismiss to the United States Magistrate Ted E. Bandstra, pursuant to 28 U.S.C. @ 636 (b).

The magistrate hear oral arguments of the Respondents' motions on September 10, 1992, and also granted all parties an additional sixty (60) days to conduct further discovery on the issue of the court's diversity jurisdiction over this action and to file supplemental motions to dismiss together with any factual materials obtained through discovery on the jurisdictional issue.

The Respondents asserted in their motion to dismiss that at the commencement of this action the Petitioner was a citizen of the State of Florida rather than of the District of Columbia as she claimed. The Respondents also argued that the Petitioner failed to state a claim for civil rights violations arising under 42 U.S.C. @ 1983, and therefore, there was no federal question jurisdiction.

Magistrate Bandstra entered his detailed Report and Recommendations, the 20th day of May, 1993, which recommended that the Respondents' Motion to Dismiss be granted. (Petitioner's Appendix p. 5). The Magistrate's Report determined that the Petitioner was a citizen of Florida at the time of the commencement of the action, and therefore, there was no diversity of Jurisdiction. Magistrate Bandstra also determined that the Petitioner had failed to state the claim under 42 U.S.C. @ 1983, and therefore, there was no federal question jurisdiction. (Petitioner's Appendix p. 5). The Petitioner objected to the report and recom-

mendation. Upon review, the Honorable C. Clyde Atkins entered an order adopting the report and recommendation, granting Respondents' motion to dismiss. (Petitioner's Appendix p. 5). In the appeal before the Eleventh Circuit, Petitioner did not challenged the determination that she failed to state a claim under 42 U.S.C. @ 1983.

In an unpublished opinion dated April 27, 1995, the United States Court of Appeals for the Eleventh Circuit affirmed the ruling of the District Court. (Petitioner's Appendix p. 4).

REASONS FOR DENYING THE WRIT

I. THE WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE RULING OF THE DISTRICT COURT DISMISSING THE PETITIONER'S CAUSE DUE TO LACK OF DIVERSITY OF CITIZENSHIP BETWEEN THE PETITIONER AND THE RESPONDENTS WAS NOT CLEARLY ERRONEOUS.

Magistrate Judge Bandstra found that the Petitioner failed to sustain her burden of proving complete diversity of citizenship. Lew v. Moss, 797 F. 2nd 747, 750 (9th Cir. 1986). That determination must be affirmed unless clearly erroneous. Scoggins V. Pollock, 727 F.2d 1025, 1027 (11th Cir. 1984).

The decision of the district court is not clearly erroneous. By her own admission, the Petitioner was domiciled in Florida until December 4, 1987. On that date the Petitioner allegedly "declared" that she was a citizen of Washington D.C.. The Petitioner made this declaration while residing in Florida. Based primarily on this "declaration" of the Petitioner, she contends that she was a citizen of Washington D.C. when this cause of action was commenced on February 7, 1992. (Petitioner's Appendix p. 5). Clearly, in order for

subject matter jurisdiction to conferred by the District Court under 28 U.S.C. @ 1331 (a)(1), complete diversity of citizenship between the Petitioner and the Respondents must exist when the action was filed. Smith v. Sperling, 77 S.Ct. 1112, 1114, 354 U.S. 91, 93 (1957). Thus, the only inquiry is whether her declaration, made December 4, 1987 while she was physically present in Florida, effected a change in her domicile. The answer to that question is clearly negative.

A change in domicile requires the confluence of physical presence at the new location with an intention to remain their indefinitely. Scoggins v. Pollock, 727 F. 2d 1025, 1026 (11th Cir. 1984). Ms. Broida met neither requirement. The Petitioner has stated that she was physically present in Florida, except for brief occasional visits to Washington, since 1977 and through the commencement of this proceeding. When the Petitioner "declared" her domicile to be Washington, D.C. on December 4, 1987

she was not present in Washington,D.C. with the intention to remain their indefinitely. Therefore, the Petitioner did not effectively change her domicile. The order of the district court is not clearly erroneous and was properly affirmed by the Eleventh Circuit.

II. A WRIT OF CERTIORARI SHOULD NOT BE GRANTED WHEN THE PURPORTED ERROR BELOW CONSISTS OF AN ALLEGEDLY ERRONEOUS FACTUAL FINDING.

According to the rules of the Supreme Court, a petition for a writ of certiorari is rarely granted when the asserted error consists of an allegedly erroneous factual finding by a lower court. Sup. Ct. R. 10 (1995). The determination at issue in this appeal is whether the Petitioner was domiciled in Florida or Washington D.C. when she filed the action in the United States District Court for the Southern District of Florida on February 7, 1992. A determination pertaining to domicile is essentially factual in nature. Lew V. Moss, 797 F2d 747,750 (9th Cir. 1995). While the Petitioner no doubt disagrees

with the factual determination made below, review of such a determination on certiorari is inappropriate.

III. A WRIT OF CERTIORARI SHOULD NOT BE GRANTED WHEN THE ASSERTED ERROR BELOW CONSISTS OF THE PURPORTED MISAPPLICATION OF A PROPERLY STATED RULE OF LAW.

According to the Rules of the Supreme Court a petition for writ of certiorari is rarely granted when the asserted error consists of a purported misapplication of a properly stated rule of law. Sup. Ct. R. 10 (1995). The rule of law at issue in this appeal is clear: the District Courts of the United States lack subject matter jurisdiction over a dispute where there is not complete diversity of citizenship between the Petitioner and the Respondents. 28 U.S.C. @ 1332(a)(1). The District Court properly stated this rule of law in its order ratifying the determination of the Magistrate. (Petitioner Appendix p. 5). While the Petitioner believes that this rule of law has been improperly applied to her, she does not dispute that complete diversity of citizenship is a prerequisite to the proper exercise of subject matter jurisdiction by the District Court. Under such circumstances, review

on certiorari is inappropriate,

IV. THE WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE QUESTIONS PRESENTED FOR REVIEW ARE VERBOSE, INCOHERENT AND REPETITIVE.

The Petitioner argues that the district judge in setting this instant case for trial on the merits when only one defendant had been served showed a complete lack of knowledge of the subject matter before him was error. The Petitioner in arguing this point fails to cite any law to support her position.

The Respondents filed their motions to dismiss and appeared in open court before the Magistrate on September 10, 1992 on their motions. The Magistrate granted all parties an additional sixty (60) days to conduct further discovery on the issue of the Court's diversity jurisdiction over this action and to file any supplemental motions on the jurisdictional issue.

Even a cursory review of the questions presented in the Petition demonstrate that they are plainly violative of the Supreme Court rule which requires that such questions be expressed concisely, and that they not be argumentative. Sup.Ct R. 14.1(a)(1995).

The questions presented in the petition are not tailored in a manner amenable to reasoned and coherent discourse, and determining what issures are raised by these questions, much less formulation an appropriate response to the questions, is nearly impossible. Having violated Supreme Court Rule 14.1 (a), review on certiorari should by denied.

V. THE WRIT OF CERTIORARI SHOULD BE DENIED, BECAUSE IT FAILS TO PRESENT WITH ACCURACY, BREVITY, AND CLARITY MATTERS ESSENTIAL TO READY AND ADEQUATE UNDERSTANDING OF THE POINTS REQUIRING CONSIDERATION.

The instant Petition is a diatribe which fails to properly focus on the real issue at hand: whether there was complete diversity of citizenship when the current action was filed. Instead of focusing on the District Court's subject matter jurisdiction, the Petition attempts to have this Court re-address issues which have already been decided by state circuit courts, state appellate courts, Florida's Supreme Court, the United States Supreme Court, the United States District Court, and the United States Court of Appeals over the course of seventeen years of litigation pursued by the Petitioner. The opinion

of the Eleventh Circuit Court of Appeals addresses the lack of subject matter jurisdiction, and no other issue. The Rules of the Supreme Court require that a petition for a writ of certiorari present with accuracy, brevity and clarity whatever is essential to ready and adequate understanding of the points requiring consideration. Sup. Ct.R. 14.4 (1995). Instead of focusing on the essential issues, the Petitioner has raised numerous points which neither merit nor require this Court's consideration.

Additionally, the Petitioner's unreasonable attitude toward the judicial process is well documented. The pursuit of frivolous claims and personal attacks on lawyers and judges caused her to be suspended from the practice of law by the Supreme Court of Florida in 1991. The Florida Bar V. Broida, 574 So. 2d 83 (Fla. 1991).

CONCLUSION

For all of the reasons mentioned above, the Respondents, BETSY H. NIEVES and PAULA ROTH, request that this Court deny the Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

ALEXANDER L. MARTONE,Esq.
Counsel of Record
Attorney for Respondents
BETSY H. NIEVES and PAULA ROTH
30 S.E. 7th Street
Boca Raton,Fla. 33432
T.P.# (407) 362-5402

BY: Alexander L. Martone
ALEXANDER L. MARTONE

(4)

Supreme Court, U.S.
FILED
MAR 15 1996
CLERK

No. 95 - 1224

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1995

EDITH HOROWITZ BROIDA,
Petitioner,

v.

ALVIN EDWARD HOROWITZ, et al,
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

PETITIONER'S REPLY BRIEF, or SUPPLEMENTAL BRIEF, and APPENDIX

EDITH BROIDA, PRO SE
DOCTOR OF JURISPRUDENCE
(Formerly Member of the
Florida Bar, 1954-1989)
P. O. Box 5941
Washington, D. C. 20016
(301) 681-2050

March 16, 1996

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ISSUES:

1. The Issue Before This Court Is - 1
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APPENDIX

1. Report and Recommendation of - a
   District Court Magistrate
   Ted E. Bandstra,May 20, 1993
2. Newspaper article, Domicile, '55 -o

This Court is advised that the Report and Recommendation of the Magistrate of the District Court accepted without review by the District Judge is included in this Reply Brief since it was not included in the Brief with the Petition since Petitioner Made a Motion on January 11, 1996 that this Court review this case together with 95-914

THE ISSUE BEFORE THIS COURT IS THE CONSTITUTIONAL RIGHT OF PETITIONER TO ACCESS TO FEDERAL COURT JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP WHERE CLEARLY DOCUMENTED EVIDENCE PROVES PETITIONER'S LONG HELD PHYSICAL DOMICILE IN A DIFFERENT STATE FROM ALL RESPONDENTS, REJECTED IN A CLEARLY ERRONEOUS DISTRICT COURT RULING, AFFIRMED ON APPEAL WITH ORAL ARGUMENT DENIED

The United States Supreme Court established in landmark case Morris v. Gilmer, 129 US 315, 328 SCT 289, 32 LED 690, 1889 very clearly that every citizen has the right to a change of domicile whenever wished with no period of residency necessary.

In Ogden v. Ogden, Florida's Supreme Court ruled, "The best proof of one's domicile is where he says it is." 33 So2d 870,1948

Opinions of the Attorney-General, Florida, 1958 stated: "There is no definite period of time necessary to create a domicile, and one day may be sufficient provided intention to create a domicile exists." 058-247, and, "In order to abandon a domicile there must be a choice of a new domicile with intention that it be the principal and permanent residence." 058-247,1958

In 1875, 88 US 352, 22 LED 584, Mitchell v US the US Supreme Court clearly states: "Domicile is residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time."

In 1914, the Supreme Court Justices held: "Residence, in fact, and the intention of making the place of residence one's home are essential elements of domicile. The actual fact of residence and the real intention of remaining there as disclosed by his entire course of conduct are the con-

trolling factors in ascertaining his domicile." Gilbert v. David, 235 US 561,569, 35 SCT 165, 166, 59 LED 36.

Review of the written evidence, oral testimony of Petitioner, evidentiary exhibits in the Appendix in this cause, the Appendix in companion case, this court, 95-914 ,additional exhibits in district court record shows Petitioner in strict compliance with the cited cases.

1. Petitioner filed suit in this and companion case 95-914 in federal district court April 7, 1992, claiming federal diversity jurisdiction, as domiciled in Washington, D. C.since December 7, 1987, five years earlier.

Respondents never presented any evidence that she did not have a continously phyical permanent residence in Washington, or that her residence in Dade County, was anything other than temporary.

Petitioner's continuous physical residence in Washington was proved by written evidence of paying homeowner's insurance since 1976,continuously through the suits in court; filing of front pages of the insurance policies for years 1989,1990, '91,'92; the insurance company's branch office in Northern Virginia's statement they insure the residence and auto for that residence. Insurance companies have jurisdiction to insure cars for a main residence when used in other states, and could insure the car used in Florida. In fact,a car purchased in Florida was titled in Washington with an extra sales tax paid by Petitioner. Petitioner can prove the same Virginia office insured her car purchased in Washington in 1969, and that later on she switched her homeowner insurance to them.

Other evidence from friends who had cor-

responded to her in Washington; friends and relatives who visited with her there; letters from her parents; correspondence with Philadephia Internal Revenue Office which is the office for Washington; transportation records showing the constant travel between Washington and Miami after she began working as personal representative and attorney in both estates of her parents in Florida, one dying six months after the other; telephone records show calls to parents and others in Dade County, Fla. from her phone in Washington See Letter from attorney Tobias Simon on why had she moved to Washington, Pet Ap,30

Respondent Betsy, daughter of Alvin, spent a weekend at Petitioner's residence, Paula and her husband visited in Washington.

Petitioner has proved indisputably she has kept her WAshington address continuously returning there after these two cases were filed in appeal. Petitioner has satisfied the requirement in Mitchell, supra, p2: "Domicile is residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time."

2. Petitioner stated she had no physical residence in Dade County, Fla and had actually moved from a rented apartment lived in for less than a year, but maintained her parents' home as legal residence, voting by absentee ballot from Washington. She continued membership in the Florida Bar. Fla. Bar membership and domicile were continued because her parents might need her legal services.

In December,1987, Petitioner proved she had made a public declaration to all defendants, parties in another federal suit,that her legal domicile is now her residence in

Washington, D. C. She had already been removed from the voting records in Dade County, Florida, as evidence from a statement of the Supervisor of Elections states she is not registered as a voter any longer, and has not been since 1989, and has not voted in any election since 1986.

Petitioner could have made a declaration of change of domicile on the day she filed the two lawsuits and it would have been valid, and in accord with Morris v. Gilmer, S. Ct. 1889 that every citizen has the right to a change of domicile whenever they wish with no period of residency necessary. She made the declaration while in Florida, but if she had been in Europe and made the declaration, as long as she already had a physical domicile existing there would have been no requirement that she return to it to so declare.

PETITIONER HAS SATISFIED the requirement in Gilbert v. David, S. Ct., 1914, that since 1987 when she declared her change of physical domicile to her already existing residence of 24 years to be her domicile as well as her major residence and merged her intention evidenced by the continuous maintenance of the physical residence with the declaration of change and the removal of her legal tie to Florida by vacating her voting rights.

The fact that she was then and until 1989 still a member of the Florida Bar has no probative value. Lawyers can be members of many Bars, but it is where

they maintain their major residence that determines their domicile, and not whether they are practicing law in some jurisdiction which is not their major domicile.

Hundreds of thousands of Americans leave a major domicile to either retire and live in another location either partially or permanently retaining their former domicile as a continuing legal domicile; others work in another location for a few or many years without changing a legal domicile; many work overseas for companies for years without losing either citizenship or their legal domicile in the USA.

Among these are Peace Corps persons who must maintain a legal domicile somewhere in the United States while working overseas for two years or more; federal and congressional employees who do not know how long the job may last and do not change the former legal domicile; and actors working on location in different places; newspaper, television, and radio reporters assigned to various locations within or without the country. These situations are endless.

THE RESPONDENT ATTORNEYS HAVE PRESENTED A FALSE STATEMENT IN ALL COURTS TO DELIBERATELY CONFUSE THE ISSUE BY STATING THAT "PHYSICAL RESIDENCE RELATES TO CONTINUOUS DAILY PRESENCE AT A RESIDENCE".

It is obviously untrue. Legal residence affects many legal rights, even

where a person lives in one county of a State and works in another. Attorney Martone responding in this case, moved from his home in South Miami, Florida after the 1992 major Hurricane which demolished South Miami. He took up residence in Boca Raton, Fla., which is a different city and county, but continued to work at his law office in South Miami for many months, or even more than a year. The Attorney who is a defendant in case no. 95-914, before this court, Samuel Smith, has always lived in the city of Miami, Florida, and since his graduation from law school in 1961 has always worked at the office of his brother already in existence for many years in the City of Miami Beach, a separate and distinct City from Miami., from 1961 to 1987.

The word "physical" as used to denote existing residence means a definite physical location which has been established as a residence, and which can be declared a legal domicile.

The courts have never intended that a person must be present at that physical location on a daily basis in order to claim it as a legal domicile. If a person had a vacation home to which they went once a year or never it can still be claimed as legal domicile.

SECOND ISSUE IS THE REFUSAL OF THE DISTRICT COURT TO FOLLOW FEDERAL PROCEDURE BY REVIEWING THE MAGISTRATE'S RECOMMENDATION DE NOVO, TO ENTER A DEFAULT JUDGMENT ON BETSY NIEVES UNTIMELY MOTION TO DISMISS, AND BEING TOTALLY UNWARE OF ANY OF THE ISSUES IN BOTH CASES

The ruling of the District Judge must be reversed as clearly erroneous. To review the actions of the District Judge is to find he had no idea of what was concerned in both cases. Having set this case for trial twice without a ruling that all defendants were before the court for trial when such motion had been twice made by Plaintiff the District Judge obviously was confused.

Neither did the Appeal Court take any effort to review the very definite proof of domicile, the flagrant mistakes of the evidence in the Magistrate's Report.

In addition the Appeal court clerk delayed this case, lost the petitions for rehearing, having the rehearing come late before the appeal court which refused to expedite its rehearing ruling so that Petitioner could bring both cases to this court on the same Petition. The appeal court used no law in support of its ruling, and no facts. It also refused oral argument after having held such in other cases in Miami, only notifying Appellant in its final ruling of such denial. Both the district court and appeal court have exceeded their jurisdiction.

While this is not a civil rights case Petitioner was deprived of civil rights in State court by the personal relationships between judges and defendant lawyers, and has been deprived again of civil rights in federal court b y refusal of judges to follow the law.

THE POSITION OF ATTORNEY MARTONE

Attorney Martone has no knowledge of the Estate of Maurice Horowitz probated in Dade County, Florida or the two federal court cases arising from it. This is probably the first time he has ever been involved in litigation. He informed Petitioner that he is an immigration attorney, although he is a lawyer in Florida since 1970. He is without knowledge of Rules of Procedure of any Court of Law.

He is a friend of Alvin Horowitz, but represents Alvin's daughter Betsy, and took substitution for Paula from attorney Bernard Weksler at the end of this case, in district court. He filed the same brief in this case and 95-914 in the Appeal court although the cases are different. He has copied the brief filed by Samuel Smith in case 95-914 for this case. However, his clients received benefits from the Estate of Maurice, by breaching the contract with Petitioner, of more than $120,000. That was a result of the 17 years of Broida's litigation that he complains about, and personal representative work. Had she not litigated against the invalid will, and not defended the eminent domain suit increasing the value of the Estate from $100,000 to $400,000 they would have had no benefit.

Petitioner, litigating in courts from 1954 won 95% of her cases. She won the eminent domain appeal which netted a settlement of an additional $100,000. (Pet Ap,p 17.

above the previous jury verdict of $300,000 obtained by her refusal to accept the $100,000 offered by the condemnor, which jury verdict followed a dismissal, appealed by the condemnor and reversed. From 1973 to 1977 Petitioner resisted the eminent domain taking keeping the grandparents of Respondents Betsy and Paula living in their home. But the lives of their grandparents are of no interest to either of these Respondent descendants.

Petitioner's reputation for honesty, ability, and success was established for a lifetime. If she disqualified judges it is because they had a personal interest in her adversaries and should have disqualified themselves, just as Justice Thomas has disqualified himself in the VMI suit in which school his son is a student, and Justice Souter has disqualified himself in all cases before this court involving the States of New Hampshire of which he was attorney-general.

As a law student Petitioner authored an article for the Symposium issue of the Miami Law Quarterly on Florida Municipal Corporation Law MLQ, Vol VIII,pp 253 -274, 1954 and is published in the University of Louisville Journal of Family Law, She also won a landmark case in 1955 changing the law of domicile in Dade County, Fla. so that a woman having established legal residence apart from her husband for divorce could have the right to vote in a different State from her husband. Petitioner is responsible for the passage of beneficial laws.

The State of Florida is so concerned about the quality of its judiciary that in 1994 the legislature appointed a committee of 19 to investigate ways of reviewing the qualifications of candidates for both election and appointment. During the progress of the case in federal court before Magistrate Bandstra, a lawyer for five years before coming to the bench and only a few years on the bench, having only experience as a government prosecutor, he was applying to be appointed a federal judge, unbeknownst to Petitioner. With five lawyers and a prestigious law firm opposing Petitioner he sought any means of ruling against her for fear these lawyers might affect his application. He deliberately ignored the obvious evidentiary proof of diversity.

Petitioner had already moved that the Judge not assign the case to anyone seeking higher office.

CONCLUSION

The dismissal of this case must be reversed as a deprivation of constitutional right of Petitioner to choose her domicile having proved its legality.

EDITH BROIDA, J. D.
Pro Se
P. O. Box 5941
Washington, D. C.
(301)681-2050

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 92-997-CIV-ATKINS

EDITH HOROWITZ BROIDA,
Plaintiff

vs.

ESTATE OF MAURICE HOROWITZ,
through its Personal Representative
Samuel S. Smith, et al.,
Defendants. /

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on (1) defendant Samuel S. Smith's Motion to Dismiss filed on May 26,1992; Defendant Gene S. Rosen's Motion to Dismiss filed on May 27, 1992; (3) Motion of Defendant Karen H. Kaplan to Dismiss filed on June 18, 1992; and Motion to Dismiss of Defendant Betsy H. Nieves filed on July 9,1992. On June 29, 1992 these and all other pretrial Motions in this case were referred to United States Magistrate Judge Ted E. Bandstra by the Honorable C. Clyde Atkins pursuant to 28 USC Sec.636(b). Accordingly the undersigned heard oral argument on these motions on September 10, 1992, and thereafter granted the parties (60) days leave to conduct discovery solely on the issue of this Court's diversity jurisdiction over this action and to file supplemental motions to dismiss together with any factual materials obtained through discovery on this jurisdictional issue. Following the conclusion of this limited discovery period, the undersigned conducted a supplemental hearing on these motions to dismiss on April 6, 1993. Having carefully considered the pleadings, all materials relevant to the jurisdictional issue, oral argument of counsel and appli-

cable law, the undersigned respectfully recommends that all four motions be GRANTED due to this Court's lack of subject matter jurisdiction as explained below.

INTRODUCTION

On May 1, 1992 Edith Horowitz Broida ("plaintiff"),proceeding pro se, commenced this action by filing a complaint against the Estate of Maurice Horowitz, its personal representative, its distributees and their counsel ("defendants"), for "payment of claims" allegedly due and owing from the Estate which was previously administered and discharged in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, Probate and Guardian Division (Case No. 78-1333). In Count I, plaintiff, the daughter of the decedent, seeks payment of $195,000 for prior debts of decedent allegedly owed to plaintiff. In Count II, plaintiff, appears to claim monies allegedly borrowed from from the Estate of Ann Horowitz (plaintiff's deceased mother) to fund the Estate of Maurice Horowitz. In Count III, plaintiff seeks payment for debts allegedly due to the Estate of Ann Horowitz. In Count IV, plaintiff seeks the return of the unused portion of the family allowance and elective share with interest. In Count V, plaintiff seeks payment of fees for the legal services she allegedly performed on behalf of her family members pursuant to an agreement. In Count VI plaintiff seeks additional payment for legal services she allegedly rendered in connection with a prior eminent domain proceeding. Finally,plaintiff demands in Count VII, that the distributees and attorneys repay the monies

they have received from the Estate.

Plaintiff alleges that the Court has original jurisdiction to entertain this action based on diversity of citizenship pursuant to 28 U.S.C. Sec 1332. Specifically plaintiff alleges that she is a citizen of Washington, D. C., and that all other defendants, with the exception of Stephen H. Horowitz, are citizens of the State of Florida. Defendant Stephen H. Horowitz is alleged to be a citizen of California. In addition, plaintiff invokes the federal question jurisdiction of this Court conferred by 28 U.S.C. Sec. 1331 based on alleged civil rights violations under 42 U.S.C. Sec. 1983.

Defendants Samuel S. Smith, individually and as personal representative of the Estate of Maurice Horowitz; Gene S. Rosen, individually and as counsel for certain distributees; and Karen H.Kaplan and Betsy H. Nieves, distributees, have moved to dismiss this action on several grounds. First, defendants argue that this Court lacks subject matter jurisdiction over the complaint in that there is no diversity of citizenship between plaintiff and defendants. In support thereof, defendants argue that at all times since the commencement of this action, plaintiff has been a citizen and resident of the State of Florida. Defendants further note and the complaint alleges that most of the defendants are citizens of Florida. Consequently Defendants argue that diversity of citizenship cannot serve as a basis for establishing this Court's jurisdiction over the subject matter of the complaint.

Second, defendants argue that

plaintiff fails to state a claim for civil rights violations arising under 42 U.S.C. Sec. 1983 so that this statute cannot confer original jurisdiction upon this Court.

Third, defendants argue that the claims alleged in plaintiff's complaint, either directly or indirectly, relate to the prior administration and/or distribution of the Estate of Maurice Horowitz which has been resolved pursuant to a final judgment entered in the Probate Division of Dade County Circuit Court on December 8, 1989. See, In Re Estate of Maurice Horowitz, Case No. 78-1553. Defendants argue that all issues raised by the instant complaint have been previously adjudicated in the state probate proceedings. Thus, defendants contend that the doctrines of res judicata and collateral estoppel bar plaintiff from relitigating her claims in federal court.[1]

CONCLUSIONS OF LAW

A. Diversity Jurisdiction

The primary issue raised in these motions is whether this Court has subject matter jurisdiction over the claims raised in the complaint. As discussed above, plaintiff attempts to invoke this Court's jurisdiction based on diversity of citizenship pursuant to 28 U.S.C.(1332(a)(1), by alleg-

[1] In response to defendants' motions to dismiss, plaintiff has filed a series of motions to strike(D.E.23,31,59), which the undersigned has addressed by separate order.

ing that she is a citizen of Washington D.C., and that defendants are citizens of Florida and California. Defendants challenge plaintiff's allegation of out-of-state citizenship, arguing that plaintiff is actually a citizen of Florida and therefore jurisdiction fails for lack of complete diversity.

Evaluating this issue, the undersigned begins by noting that 28 U.S.C. Sec. 1332(a)(1) provides:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of value of $50,000, exclusive of interest and costs, and is between-
>
> 1) citizens of different states;....

As the party seeking to invoke this Court's jurisdiction under this diversity statute, plaintiff has the burden of proving that complete diversity of citizenship exists between the parties, i,e, plaintiff must have citizenship different from that of each defendant. Hawes v. Club Ecuestre El Comandante, 598 F2d 698, 702(1st Cir.1979). Such diversity of citizenship must exist at the time this action was filed. Smith v. Sperling, 354 U.S. 91,93,n1(1957).

In order to be a citizen of a state the meaning of the diversity provision a natural person must be both a citizen of the United States and a domiciliary of a state. Las Vistas Villas,S.A. v. Petersen, 778 F. Supp 1202,1204(M.D. Fla. 1991). [2] In this context, citi-

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2The word "States" as used in Sec. 1332 includes the District of Columbia. See 28 U.S.C. Sec. 1332 (d).

zenship and domicile are synonymous. Freeman v. Northwest Acceptance Corp, 754 F2d 553,555(5th Cir.(1985).Domicile is defined as"a residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." Id.,quoting Mitchell v. 88 U.S. (21 Wall) 350,352 (1875). Simply stated, domicile is determined by two factors; residence and intention to remain. Las Vistas Villas, at 1204. In examining these two factors, a court must consider the totality of the evidence of a person's contacts with a state and of her intent to remain there. See Willis, 651 F.Supp at 601. Thus, domicile is evaluated in terms of objective facts so that statements of intent are entitled to little weight when in conflict with facts. See Freeman v. Northwest Acceptance Corp, 754 F2d at 556.

In this case, the objective facts reveal that plaintiff moved to Miami Beach, Florida in November 1934. She attended college in Florida and thereafter began her working life in a women's apparel store operated by her father on Miami Beach . Plaintiff married in 1941 and gave birth to a daughter in Miami Beach on Septtember 21, 1943. Following plaintiff's divorce in 1949, she attended law school at the University of Miami where she earned a law degree. In 1954, plaintiff became a member of the Florida Bar and began practicing law. In January 1963 plaintiff moved to Washington D. C. where she obtained employment with the federal government and participated in several organizations and/or programs including the Foggy Bottom Neighborhood Association, the "Future for

Jimmy" program and the "Upward Bpund"* Program. While maintaining her residence in Washington D.C., plaintiff periodically returned to Florida for extended visits between 1963 and 1971 to attend to family matters. In 1972* plaintiff returned to Florida in order to handle eminent domain proceedings involving her parents' residence on Miami Beach. After approximately five years of litigation, these proceedings concluded and plaintiff returned to Washington D.C. for a brief period of time* Upon the death of plaintiff's mother in 1977, plaintiff returned to Florida where she has continuously spent the last sixteen years embroiled in litigation concerning the probate of both her parents' estates and other related matters. In 1986 plaintiff ran for Dade County Circuit Court Judge. Her campaign brochure lists a myriad of organizations in which plaintiff was a member including, inter alia, the Florida Bar, the Florida Association of Women Lawyers, The Miami Beach Bar Association, The City of Miami Downtown Planning Commission,and Miami Citizens Against Crime. Plaintiff last voted in Florida in 1986.

Most significantly, at the commencement of this lawsuit, and continuing to date, plaintiff receives her mail at a P.O. Box located in Miami Beach, Florida. She maintains an unlisted telephone number in Florida and utilizes an answering located in North Miami. Plaintiff does not presently have a phone listing in Washington D.C. Plaintiff also has a valid driver's license issued by the State of Florida and owns an automobile registered in Florida. Indeed, plaintiff spends and has spent the overwhelming majority of her time in Florida since 1977 except for brief round-

*Petitioner's Note Paid Director by D.C. Model School Div. See Ap;*1974 *Proceedings concluded 1984 for Estate

trip visits to Washington D. c. primarily on her birthday or during the holiday season.

Notwithstanding this evidence, plaintiff urges this Court to view her presence in Florida since 1977 as temporary based on her desire to return to Washington, D.C., her 'declared' domicile, and the presence of her alleged physical residence in Washington D.C. In support thereof, plaintiff points to a petition for removal dated December 7, 1987, filed in a prior probate proceeding, in which she alleges that she was a citizen of the State of Florida until December 4, 1987, when she declared that she was a citizen of Washington D.C. Specifically the petition provides in pertinent part:

The above-entitled action wholly involves citizens of different states. At the commencement of this action in Dade County, Florida, petitioner herein was a resident and citizen of Dade County, Florida , as were the other named defendants in the suit.

a. Petitioner Edith Horowitz Broida is no longer a citizen of Dade County, Florida although residing in Florida. Said petitioner has declared her citizenship as being the District of Columbia, Washington, D. C. where she established residence in January 1963 and has maintained it continuously since. Petitioner declares that citizenship as of December 4, 1987.

See D.E. 55, Exhibit A.[3] Based pri-

[3] Significantly, the proceedings which plaintiff attempted to remove via this petition were remanded to state court.

marily on this"declaration", plaintiff contends that she was a citizen of Washington D. C. at the commencement of this action. See Ogden v. Ogden, 33 So2d 870 (Fla. 1947)("the best proof of one's domicile is where he says it is.") Plaintiff's position is further exemplified by her deposition testimony in which she stated:

Q. Specifically you say you changed your domicile. In a nutshell, how did you do that?

A. By saying so. That's how you do that?

Q. Other than your declaration, what changed on December 4, 1987?

A. Other than my declaration, what changed?

Q. Yes.

A. My declaration changed where I am domiciled.

Broida Deposition,pages 38-39.

With regard to plaintiff's alleged residence in Washington, D. C., plaintiff submits a copy of a letter from Liberty Mutual Insurance Company, Fairfax, Virginia, dated August 17, 1992, stating that it has been issuing homeowners insurance policies on the "Washington D.C. residence of Edith Broida" from 1979* through 1992 and that it also insures her automobile. See Docket Entry 42. However, plaintiff fails to submit the actual policies on this alleged residence. In addition, plaintiff failed to provide an address for this residence or information on whether she owns or rents the residence. Indeed, plaintiff candidly stated,"I will not answer any questions about my residence in either location, in Miami or Washington, and don't ask me any more

*Petitioner's note: error, the letter, Appendix,states date of 1976.

questions on it." Broida Deposition, page 16.

As further evidence of a Washington, D.C. domicile, plaintiff submits the affidavits of Martha Neham Edelstein and Phyllis Shampanier, two long time acquaintances of plaintiff,* who both attest, based on conversations with plaintiff, that plaintiff has a residence in Washington, D. C.*

Reviewing the objective facts outlined above, the undersigned finds that plaintiff has failed to sustain her burden of showing that she is a citizen of Washington, D. C. Specifically, the undersigned places little weight on plaintiff's "declaration" and proof of residency in view of the objective evidence indicating to the contrary. As stated by the Fifth Circuit in Freeman v. Northwest Acceptance Corp. supra:

> ...Words may be evidence of a man's intention to establish his domicile at a particular place of residence, but they cannot supply the fact of his domicile there. In such circumstances, the actual fact of residence and a real intention of remaining there, as disclosed by his entire course of conduct, are the controlling factors in ascertaining his domicile.

Here, plaintiff's course of conduct does not show that she ever changed her domicile from Florida to Washington D.C. at any time after her declaration in 1987. Significantly, plaintiff has failed to present any objective evidence whatsoever of any severing of ties to her Florida domicile subsequent to this declaration.

* Petitioner's Note. two 'friends', Edelstein visited Pet. in her Washington residence; colleague Shampanier wrote her in Washington. See Ap

Moreover, the complaint's factual allegations reflect plaintiff's continuous residency in Dade County, Florida since approximately 1977.*

In summary, the undersigned finds that Plaintiff was a citizen of Flor ida at the time she filed this action. Accordingly, the undersigned recommends that defendant's motions to dismiss be granted pursuant to Fed.R. Civ.P. 12(b)(1) for lack of diversity jurisdiction.

B. Federal Question Jurisdiction

Defendants next contend that plaintiff has failed to establish this Court's jurisdiction based on federal questions arising out of her civil rights claim brought pursuant to 42 U.S.C. Sec. 1983. In order to state a claim under Sec. 1983, a complaint must adequately allege that the conduct complained of (1) was committed by a person acting under color of state law, and (2) deprived the complainant of rights, privileges, or immunities secured by the Constitution of law of the United States. Harvey v. Harvey, 949 F2d 1127(11th Cir. 1992), citing Flagg Brothers, Inc. v. Brooks, 436 U.S. 149, 156-57, 98 S. Ct. 1729,1733 (1978).

Reviewing the complaint, the undersigned finds that plaintiff has failed to allege that she was deprived of any right or privilege protected by the United States Constitution or any federal law. Plaintiff alleges that the defendant lawyers improperly influenced the judges presiding over plaintiff's state court proceedings in violation of her constitutional rights to due process and equal protection of the law. Cpt.para 10. However, plaintiff fails to allege any state action on the part of

*Petitioner's note: Ignored by the Court- she has been personal representative and attorney for 2 estates.

the lawyer defendants as required for a civil rights claim. See Fast v Wead, 509 F.Supp. 744(N.D. Ohio 1981) (conduct of clients in representing clients does not constitute state action under color of state law). Accordingly, the undersigned finds that plaintiff has failed to state a claim under 42 U.S.C. Sec. 1983. In so finding , the undersigned notes that plaintiff apparently fails to comprehend that the federal courts ordinarily have no jurisdiction to review state court proceedings. Explaining the court's lack of jurisdiction in an analagous matter , the Honorable James Lawrence King stated:

> The plaintiff has wrongfully invoked this court's original jurisdiction to entertain what is essentially a request for an appellate review of the above-described state court ruling. Therefore, the complaint in its entirety is dismissed, pursuant to FED.R.Civ. P. 12(b)(1), for lack of jurisdiction over the subject matter. It is well settled law that a plaintiff may not seek review of a state court ruling simply by alleging a civil rights violation in his complaint. Even where there is a constiutional error in the state court's decision, the plaintiff's sole recourse is to the state appellate court or the United States Supreme Court, not to the United States District Court. See Hagerty v. Succession of Clement, 749 F2d 217(5th Cir. 1984); Reynolds v. State of Ga., 640 F2d 702 (5th Cir.1981) Dist. of Columbia Court of Appeals v. Feldman, 103 S.Ct. 1303(1983);

Rooker v. Fidelity Trust Co., 44 S.Ct 149 (1923).

See Final Order Granting Defendant's Motion to Dismiss, Pruessman v. McDonald, Case No. 89-1613-Civ-King (S.D. Fla. 1989). Here, as in Preussman, plaintiff's recourse is to the state appellate court or to the United States Supreme Court. The fact that plaintiff was unsuccessful in these forums does not provide this federal court with jurisdiction to decide her claims.*

SUMMARY

Based on the foregoing, the undersigned recommends:

(1) that Defendant Samuel S. Smith's Motion to Dismiss be GRANTED:

(2) that Defendant Gene S. Rosen's Motion to Dismiss be GRANTED:

(3) that the Motion of Defendant Karen H. Kaplan to Dismiss be GRANTED; and

(4) that the Motion to Dismiss of Betsy H. Nieves be GRANTED."

The parties may serve and file written objections to this Report and Recommendation with the Honorable C. Clyde Atkins, United states District Judge, within ten (10) days of receipt. See 28 U.S.C. Sec 636(b)(1)(C); United States v. Warren, 687 F2d 347 (11th Cir.1982),cert.denied, 460 U.S. 1087 (1983); and Hardin v. Wainright, 678 F2d 589(5th Cir.Unit B 1982); see also Thomas v. Arn, 474 U.S. 140(1985)

RESPECTFULLY SUBMITTED in Miami, Florida, this 20th day of May, 1993.

/S/ Ted E. Bandstra
TED E. BANDSTRA
UNITED STATES MAGISTRATE JUDGE

* Petitioner's Note: Hon. King is a fellow Distr. court Judge, and not a

Copies furnished to:
Honorable C. Clyde Atkins
All counsel of record

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[4] Having so recommended, the undersigned finds it unnecessary to address defendants' res judicata and collateral estoppel arguments as further grounds for dismissal.

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*Petitioner's note cont'd: reported decision. We have no knowledge of that case. This Magistrate ignored petitioner's cited federal law for suits between heirs on claims, and state probate law providing such suit. This case was not decided in state court but dismissed in violation of civil rights as influenced by defendant lawyers conspracy with state judge. Magistrate refused petitioner to argue grounds other than diversity but here rules on them, a further civil rights due process violation.

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BEST AVAILA

The Miami Herald
6-A Sunday, Feb. 27, 1938

Vote Right Of Wife Is Upheld

By C. G. BERNING
Herald Staff Writer

A married woman can acquire a separate Florida residence for all legal purposes, including voting, Circuit Judge Pat Cannon ruled Thursday.

He ordered registration supervisor Carl Holmer to list Zelda Taub Fassberg, a Miami Beach saleswoman, as a Dade county voter as long as she qualifies by having lived in Florida a year and Dade county six months.

Holmer's refusal to register Mrs. Fassberg because her husband lives in New York, caused Mrs. Edith Broida, Miami Beach attorney, to file the unusual suit to test a married woman's right to establish separate domicile from that of her husband.

Holmer told Mrs. Fassberg that she could register to vote only if she obtained a divorce and then resided in Florida one year and Dade county six months.

The Florida divorce law permits a woman to file a divorce suit as a Florida resident after establishing residence for 90 days with intention to remain as a permanent resident.

Mrs. Fassberg came here Nov. 15, 1933 and Mrs. Broida contended that one year from that date, whether or not she wanted a divorce, she was entitled to register as a Florida voter.

Circuit Judge Marshall C. Wiseheart granted her a divorce decree from Philip Fassberg of New York last March 31.

John Reed, assistant attorney general, said Judge Cannon's decision will be appealed to Florida Supreme court. He contends that a married woman's residence is that of her husband with the exception that for divorce purposes only she may establish residence.

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